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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2641

RIN 3209–AA07

Post-Employment Conflict of Interest Restrictions; Exemption of Positions and Revision of Departmental Component Designations

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is issuing this rule to provide notice of the exemption of certain senior employee positions from the one-year post-employment restriction of 18 U.S.C. 207(c) and to designate certain additional departmental components and to revoke certain existing component designations for purposes of 18 U.S.C. 207(c).

EFFECTIVE DATES: The additions to appendix A to part 2641, as set forth in amendatory paragraph 2 below, are retroactively effective June 2, 1994.

The amendments to appendix B to part 2641, as set forth in amendatory paragraph 3 below, are effective May 16, 1997.

Finally, the removal of certain designations from appendix B to part 2641 (and a related footnote redesignation), as set forth in amendatory paragraph 4 below, are effective on August 14, 1997.

FOR FURTHER INFORMATION CONTACT: Julia Loring Eirinberg, Office of General Counsel and Legal Policy, Office of Government Ethics; telephone: 202–208–8000, extension 1108; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion

Exemption of Positions

The Director of the Office of Government Ethics (OGE) is authorized by 18 U.S.C. 207(c)(2)(C) to exempt eligible employee positions from 18 U.S.C. 207(c), the one-year post-employment restriction applicable to former ''senior'' employees. As explained in 5 CFR 2641.201(d)(1), termination from an exempted position does not trigger the restriction.

Pursuant to the procedures prescribed in 5 CFR 2641.201(d), the designated agency ethics official at the Department of Justice forwarded a letter to OGE dated May 16, 1994, requesting that the Director of OGE exempt the 21 United States Trustee positions from the restrictions of 18 U.S.C. 207(c). After carefully reviewing that letter and other relevant information, I determined as Director of OGE to exempt the 21 positions from 18 U.S.C. 207(c) in light of the criteria set forth in 5 CFR 2641.201(d)(5). These exemptions became effective on June 2, 1994, the date of my written response to the Department of Justice. See 5 CFR 2641.201(d)(4).

As specified in 5 CFR 2641.201(d)(3)(iii), the Director of OGE ''shall annually publish in appendix A to this part an updated compilation of all exempted positions or categories of positions.'' Accordingly, appendix A of part 2641 is being amended by this rule to ensure publication of the exemptions in the CFR. These exemptions were not published previously due to administrative oversight.

Appendix A of this part, the heading of which is being revised to conform with that of appendix B, includes parenthetical entries highlighting the effective dates of the exemptions. As indicated in 5 CFR 2641.201(d)(4), ''[a]n exemption shall inure to the benefit of the individual who holds the position when the exemption takes effect, as well as to his successors, but shall not benefit individuals who terminated senior service prior to the effective date of the exemption.''

Designation and Revocation of Departmental Components

The Director of OGE is authorized by 18 U.S.C. 207(h) to designate distinct and separate departmental or agency components in the executive branch for purposes of 18 U.S.C. 207(c). The representational bar of 18 U.S.C. 207(c) usually extends to the whole of any department or agency in which a former senior employee served in any capacity during the year prior to termination from a senior employee position. However, eligible senior employees may be permitted to communicate to or appear before parts of their former department or agency if one or more components of the department or agency have been designated as separate agencies or bureaus by OGE.

As specified in 5 CFR 2641.201(e)(3)(iii), the Director of OGE ''shall by rule make or revoke a component designation after considering the recommendation of the designated agency ethics official.'' Component designations are listed in appendix B of this part. Pursuant to the procedures prescribed in 5 CFR 2641.201(e), several agencies and departments have forwarded letters to OGE requesting the designation or revocation of components since appendix B was last revised in 1993 (58 FR 33755–33756 (June 21, 1993)). After carefully reviewing these requests in light of the criteria in 18 U.S.C. 207(h) as implemented in 5 CFR 2641.201(e)(6), I have determined to designate or revoke certain components as described below.

As requested by the Department of Commerce, I am revoking the designation of the United States Travel and Tourism Administration (USTTA) as a distinct and separate component of that Department. The USTTA was recently eliminated, although some of its functions continue to be performed by another component of the Department.

As requested by the Department of Defense (DOD), I am revoking the designations of the Defense Mapping Agency and the Defense Nuclear Agency as distinct and separate components of DOD. I am replacing them with two components which are, in large part, successor components. The new National Imagery and Mapping Agency absorbed the former Defense Mapping Agency and has responsibility for certain functions formerly performed by the Central Intelligence Agency and by several offices within DOD. The Defense Nuclear Agency was renamed the Defense Special Weapons Agency in 1996 as a result of a new charter and an expanded mission. The missions of the two new agencies remain distinct and separate from the parent Department.

As recommended by the Department of Health and Human Services (HHS), I

am revoking the designation of two components and designating several additional components as a result of a reorganization of that Department. Specifically, I am revoking the designation of the Social Security Administration (SSA) as a distinct and separate component of HHS since the SSA is no longer a part of the Department. I am also revoking the designation of the Public Health Service (PHS). I am, however, designating as distinct and separate seven components that had previously been operating divisions within the PHS: The Agency for Health Care Policy and Research; the Agency for Toxic Substances and Disease Registry; the Centers for Disease Control and Prevention, the Health Resources and Services Administration, the Indian Health Service, the National Institutes of Health; and the Substance Abuse and Mental Health Services Administration. Finally, I am designating one new HHS operating division as an additional distinct and separate component, the Administration on Aging.

As recommended by the Department of the Interior (DOI), I am revoking the designation of the Bureau of Mines and the Office of Territorial and International Affairs to reflect a reorganization of the DOI that eliminated those two bureaus. I am also revising the listing for the DOI to indicate that the name of the Office of Surface Mining has been changed to the Office of Surface Mining Reclamation and Enforcement.

As recommended by the Department of Justice (DOJ), I am amending appendix B so that the several Offices of the United States Marshals Service shall henceforth be considered a single component for purposes of 18 U.S.C. 207(c). Prior to this rule, the Office of the United States Marshal for each judicial district had been considered a separate component from each other such Office. Also, the United States Marshals Office for each judicial district will, like other designated DOJ components operating within a district, be considered separate from each Office of the United States Attorney for that district. In addition, I am amending the entry for the Independent Counsel to clarify that the designation applies only with respect to Independent Counsel appointed by the Attorney General. And, I am correcting the title of the Office of the Pardon Attorney.

As recommended by the Department of Labor (DOL), I am designating the Pension and Welfare Benefits Administration (PWBA) as an additional distinct and separate component of that Department. While the PWBA has been in existence for some years, it was not previously designated as a component of the DOL for purposes of 18 U.S.C. 207(c).

I am designating the Surface Transportation Board (STB) as an additional distinct and separate component of the Department of Transportation (DOT). The STB, the successor to the Interstate Commerce Commission, was recently established as an independent entity within DOT.

As requested by the Department of the Treasury, I am revoking the designation of the United States Savings Bonds Division (SBD) as a distinct and separate component of that Department. The responsibilities of the former SBD have been taken over by the Bureau of the Public Debt, another component of the Department.

Finally, I am revoking the designation of the Central Liquidity Facility (CLF) as a component of the National Credit Union Administration (NCUA). The NCUA recommended the revocation because the functions of the CLF have been more closely integrated into those of the NCUA as a whole. Since the CLF was the sole designated component of the NCUA, I am removing the NCUA from the listing in Appendix B of ''parent'' departments or agencies.

As indicated in 5 CFR 2641.201(e)(4), a designation ''shall be effective as of the effective date of the rule that creates the designation, but shall not be effective as to employees who terminated senior service prior to that date.'' Most designations were effective as of January 1, 1991. The effective date of subsequent designations is indicated by means of parenthetical entries in appendix B. The new component designations made by this rulemaking document are effective May 16, 1997. As also provided in 5 CFR 2641.201(e)(4), a revocation is effective 90 days after the effective date of the rule that revokes the designation. Accordingly, the component designation revocations made in this rulemaking will take effect August 14, 1997. Revocations are not effective as to any individual terminating senior service prior to the expiration of the 90-day period.

B. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, as the Director of OGE, I find that good cause exists for waiving the general notice of proposed rulemaking and 30-day delayed effective date. It is important that OGE's designation of exempted positions and designation or revocation of separate departmental or agency components be published in the **Federal Register** as promptly as possible. Also, this rule is interpretive in nature and, thus, it is exempt from the notice and delayed effectiveness requirements of 5 U.S.C. 553.

Executive Order 12866

In promulgating this final rule, the Office of Government Ethics has adhered to the regulatory philosophy and applicable principles of regulation in section 1 of Executive Order 12866, Regulatory Planning and Review. This rule has not been reviewed by the Office of Management and Budget under that Executive order since it deals with agency organization, management, and personnel matters and is not ''significant'' thereunder.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rule will not have a significant economic impact on a substantial number of entities because it affects only Federal agencies and current and former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this rule because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2641

Conflict of interests, Government employees.

Approved: May 9, 1997.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending part 2641 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2641—[AMENDED]

1. The authority citation for part 2641 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 207; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Effective June 2, 1994, appendix A to part 2641 is amended by revising the appendix heading and by adding a listing for the Department of Justice between the introductory text and the listing for the Securities and Exchange Commission to read as follows:

Appendix A to Part 2641—Positions Exempted from 18 U.S.C. 207(c)

* * * * *

Agency: Department of Justice. Positions: United States Trustee (21) (effective June 2, 1994).

* * * * *

3. Effective May 16, 1997, appendix B to part 2641 is amended by revising the listings for the Department of Commerce, the Department of Defense, the Department of Health and Human Services, the Department of the Interior, the Department of Justice, the Department of Labor, the Department of Transportation, the Department of the Treasury and the National Credit Union Administration, to read as follows:

Appendix B to Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)

* * * * *

Parent: Department of Commerce

Components:
- Bureau of the Census
- Bureau of Export Administration (effective January 28, 1992)
- Economic Development Administration
- International Trade Administration
- Minority Business Development Administration
- National Oceanic and Atmospheric Administration
- National Telecommunications and Information Administration
- Patent and Trademark Office
- Technology Administration (effective January 28, 1992)
- United States Travel and Tourism Administration (effective January 28, 1992; expiring August 14, 1997)

Parent: Department of Defense

Components:
- Department of the Air Force
- Department of the Army
- Department of the Navy
- Defense Information Systems Agency
- Defense Intelligence Agency
- Defense Logistics Agency
- Defense Mapping Agency (expiring August 14, 1997)
- Defense Nuclear Agency (expiring August 14, 1997)
- Defense Special Weapons Agency (effective May 16, 1997)
- National Imagery and Mapping Agency (effective May 16, 1997)
- National Security Agency

* * * * *

Parent: Department of Health and Human Services

Components:
- Administration on Aging (effective May 16, 1997)
- Administration for Children and Families (effective anuary 28, 1992)
- Agency for Health Care Policy and Research (effective May 16, 1997)
- Agency for Toxic Substances and Disease Registry (effective May 16, 1997)
- Centers for Disease Control and Prevention (effective May 16, 1997)
- Food and Drug Administration
- Health Care Financing Administration
- Health Resources and Services Administration (effective May 16, 1997)
- Indian Health Service (effective May 16, 1997)
- National Institutes of Health (effective May 16, 1997)
- Public Health Service (expiring August 14, 1997)
- Social Security Administration (expiring August 14, 1997)
- Substance Abuse and Mental Health Services Administration (effective May 16, 1997)

Parent: Department of the Interior

Components: [1]
- Bureau of Indian Affairs (effective January 28, 1992)
- Bureau of Land Management (effective January 28, 1992)
- Bureau of Mines (effective January 28, 1992; expiring August 14, 1997)
- Bureau of Reclamation (effective January 28, 1992)
- Minerals Management Service (effective January 28, 1992)
- National Park Service (effective January 28, 1992)
- Office of Surface Mining Reclamation and Enforcement (effective January 28, 1992)
- Office of Territorial and International Affairs (effective January 28, 1992; expiring August 14, 1997)
- U.S. Fish and Wildlife Service (effective January 28, 1992)
- U.S. Geological Survey (effective January 28, 1992)

Parent: Department of Justice

Components:
- Antitrust Division
- Bureau of Prisons (including Federal Prison Industries, Inc.)
- Civil Division
- Civil Rights Division
- Community Relations Service
- Criminal Division
- Drug Enforcement Administration
- Environment and Natural Resources Division
- Executive Office for United States Attorneys [2] (effective January 28, 1992)
- Executive Office for United States Trustees [3] (effective January 28, 1992)
- Federal Bureau of Investigation
- Foreign Claims Settlement Commission
- Immigration and Naturalization Service
- Independent Counsel appointed by the Attorney General
- Office of Justice Programs
- Office of the Pardon Attorney (effective January 28, 1992)
- Offices of the United States Attorney (94) [4]
- Offices of the United States Marshal (94) (expiring August 14, 1997) [5]
- Offices of the United States Trustee (21) [6]
- Tax Division
- United States Marshals Service (effective May 16, 1997)
- United States Parole Commission

Parent: Department of Labor

Components:
- Bureau of Labor Statistics
- Employment and Training Administration
- Employment Standards Administration
- Mine Safety and Health Administration
- Occupational Safety and Health Administration
- Pension and Welfare Benefits Administration (effective May 16, 1997)

* * * * *

Parent: Department of Transportation

Components:
- Federal Aviation Administration
- Federal Highway Administration
- Federal Railroad Administration
- Federal Transit Administration
- Maritime Administration
- National Highway Traffic Safety Administration
- Saint Lawrence Seaway Development Corporation
- Surface Transportation Board (effective May 16, 1997)
- United States Coast Guard

Parent: Department of the Treasury

Components:
- Bureau of Alcohol, Tobacco and Firearms
- Bureau of Engraving and Printing
- Bureau of the Mint
- Bureau of the Public Debt
- Comptroller of the Currency
- Federal Law Enforcement Training Center
- Financial Management Center
- Internal Revenue Service
- Office of Thrift Supervision
- United States Customs Service
- United States Savings Bonds Division (effective April 7, 1992; expiring August 14, 1997)
- United States Secret Service

Parent: National Credit Union Administration (expiring August 14, 1997)

Component:
- Central Liquidity Facility (expiring August 14, 1997)

4. Effective August 14, 1997, appendix B to part 2641 is further amended by:

A. Removing the listing for the National Credit Union Administration (and the sole component thereunder);

B. Removing the United States Travel and Tourism Administration from the listing for the Department of Commerce, the Defense Mapping Agency and the Defense Nuclear Agency from the listing for the Department of Defense, the Social Security Administration and the Public Health Service

[1] All designated components under the jurisdiction of a particular Assistant Secreary shall be considered a single component for purposes of determining the scope of 18 U.S.C. 207(c) as applied to senior employees serving on the immediate staff of that Assistant Secreary.

[2] The Executive Office for Untied States Attorneys shall not be considered separate from any Office of the United States Attorney for a judicial district, but only from other designated components of the Department of Justice.

[3] The Executive Office for Untied States Attorneys shall not be considered separate from any Office of the United States Trustee for a region, but only from other designated components of the Department of Justice.

[4] Each Office of the United States Attorney for a judicial district shall be considered a separate component from each other such office.

[5] Each Office of the Untied States Marshal for a judicial district shall be considered a separate component from each other such office.

[6] Each Office of the United States Trustee for a region shall be considered a separate component from each other such office.

from the listing for the Department of Health and Human Services, the Bureau of Mines and the Office of Territorial and International Affairs from the listing for the Department of the Interior, the United States Savings Bonds Division from the listing for the Department of the Treasury, and the Offices of the United States Marshal (94) (and related footnote 5) from the listing for the Department of Justice; and

C. Redesignating footnote 6 as footnote 5.

[FR Doc. 97–12898 Filed 5–15–97; 8:45 am]
BILLING CODE 6345–01–U

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 1941

RIN 0560–AE99

Implementation of the Boll Weevil Eradication Loan Program

AGENCY: Farm Service Agency, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This action is being taken to implement provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997 (Act). The Act directed the Secretary to implement a new loan program to facilitate efforts to eradicate, and protect eradication zones, of the boll weevil. The intended effect is to comply with the Act, assist in boll weevil eradication, and promote cooperation between the United States Department of Agriculture (USDA) and State chartered organizations with regard to boll weevil eradication.

DATES: Effective May 16, 1997. Comments must be submitted by July 15, 1997.

ADDRESSES: Submit written comments to the Director, Farm Loan Programs Loan Making Division, Farm Service Agency, United States Department of Agriculture, 1400 Independence Ave. SW, Washington, D.C. 20250–0522.

FOR FURTHER INFORMATION CONTACT: Michael R. Hinton, Branch Chief, Funds Management/Direct Loans Branch, FSA. Telephone: 202–720–1472; facsimile: 202–690–1117; or e-mail: mhinton@wdc.fsa.usda.gov

SUPPLEMENTARY INFORMATION

Executive Order 12866

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

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this program. The administration certifies that this program will not have a significant economic impact on a substantial number of small entities. By statute this program applies only to State chartered non-profit organizations whose primary mission is the eradication of the boll weevil. These loans cannot be made to small entities or individuals. Small entity farmers may be indirectly impacted by the program through lower producer assessments for boll weevil eradication, but the impact will be the same for large entity and individual producers.

Environmental Evaluation

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program''. An environmental assessment (EA) has been completed. The EA found no significant environmental impact of the boll weevil eradication loan program. The record of decision and FONSI were published in the **Federal Register** on April 21, 1997.

Executive Order 12988

The interim rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule are not retroactive and preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are not retroactive. In accordance with section 212 (e) of the Department of Agriculture Reorganization Act of 1994, before any judicial action may be brought concerning the provisions of this rule, administrative review under 7 CFR parts 11 and 780 must be exhausted.

Executive Order 12372

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

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Farm Service Agency (FSA) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

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. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

The Agency has reviewed this rule to determine the applicability of the Paperwork Reduction Act of 1995. In accordance with 5 CFR section 1320.3(c)(4), there are fewer than 10 persons or organizations from whom a collection of information can reasonably be expected within a 12-month period. The information requirements of this program do not impact a substantial majority of the industry, nor do they meet the rule of general applicability. The Agency determined that the regulatory provisions of 5 CFR part 1320 do not apply to this rule; therefore, it was not reviewed by the Office of Management and Budget.

Background

The Boll Weevil Eradication Program is a cooperative program between the Federal and State governments and the cotton industry. The Animal and Plant Health Inspection Service (APHIS) provides eligible grower organizations: (1) Equipment; (2) technical and administrative support; and (3) cost-sharing not to exceed 30 percent of the program costs. The portion of program costs not provided for by APHIS are paid by the eligible grower organizations through the collection of producer assessments. The high initial costs of eradication programs result in levels of assessments which create significant financial hardship on many producers.

The Act directed the Secretary to implement a new loan program to facilitate efforts to eradicate, and protect eradication zones, of the boll weevil. By implementing the Boll Weevil Eradication Loan Program, FSA will provide loans to eligible grower organizations for the purpose of spreading initial startup costs over a period of several years, which will reduce the initial annual assessment

producers are required to pay. The end result will be a financially feasible program.

The determination of whether or not an organization is an eligible organization to receive APHIS cost share money is a determination made solely by APHIS. FSA will rely on that determination, in part, in determining whether or not a producer organization is an eligible organization to receive a boll weevil eradication loan from FSA. Because this determination is solely an APHIS determination it will be subject to any APHIS review rights but will not be subject to any FSA appeal rights in accordance with 7 CFR parts 11 or 780. Denial of a boll weevil eradication loan on other bases will be subject to FSA review rights.

The Act requires the Secretary to establish terms and conditions including repayment schedules, interest rates, and collateral requirements that best meet the needs of the borrowers. FSA has established the rates, terms, and collateral requirements of this regulation to allow for maximum flexibility. These requirements are negotiable to a large extent, but the loan will be adequately secured.

Cotton grower organizations which are involved in eradication programs have an urgent need for the new FSA loans. This need affects two critical areas: existing programs, and new expansion programs for 1997.

Existing programs in Texas and the Southeast are experiencing challenges regarding cashflow. Payroll expenses and the expense of ordering equipment and supplies for the coming season require significant resources immediately. These ongoing programs are not scheduled to collect grower assessments for the 1997 season until late spring or even mid-summer. Without the loan program to supplement APHIS grant money, they will not be able to meet their current operating expenses and the programs will be forced to be suspended due to a lack of financial resources. Their cashflow needs are critical.

In addition, several new areas have conducted referenda to determine areas of program expansion in 1997. Western Louisiana and most of Mississippi have held affirmative referenda and are moving toward starting their programs in the coming season. Large quantities of capital equipment and supplies will need to be ordered immediately to ensure delivery prior to the start of these two programs.

Any delay in obtaining FSA loans could seriously restrict current operations and spring activities in the existing program areas. Such delay could also cripple program expansion into new areas, and possibly even delay program implementation for at least one year. Publication of this rule for immediate effect without prior notice and comment as an interim final rule, therefore, is warranted. Despite the need for the program to be effective upon publication of this interim rule, FSA will accept comments for a 60 day comment period after publication to determine if the program should be subsequently modified.

List of Subjects in 7 CFR Part 1941

Loan programs/agriculture, Pesticides and pests, Cotton.

For reasons set out in the preamble, 7 CFR chapter XVIII is amended as set forth below.

PART 1941—OPERATING LOANS

1. The authority citation for part 1941 is revised to read as follows:

Authority: 5 U.S.C 301, 7 U.S.C. 1989, Pub. L. 104–180.

2. Subpart C is added to read as follows:

Subpart C—Boll Weevil Eradication Loan Program

Sec.

Subpart C—Boll Weevil Eradication Loan Program

§ 1941.970 Introduction.

The regulations of this subpart set forth the terms and conditions under which loans are made under the Boll Weevil Eradication Loan Program. These regulations are applicable to applicants, borrowers, and other parties involved in making, servicing, and liquidating these loans. The program objective is to assist producers and state government agencies in the eradication of boll weevils from cotton producing areas.

§ 1941.971 Definitions.

As used in this subpart, the following definitions apply:

APHIS means the Animal and Plant Health Inspection Service, or any successor Agency.

Extra payment means a payment which was derived from sale of property serving as security for a loan, such as real estate or vehicles. Proceeds from program assessments and other normal operating income, when remitted for payment on a loan will not be considered as an extra payment.

FSA means the Farm Service Agency, its employees, and any successor agency.

Non-profit corporation means a private domestic corporation created and organized under the laws of the States in which the entity will operate whose net earnings are not distributable to any private shareholder or individual and which qualify under Internal Revenue Service code.

Program subsidy account means a budget account established under the Credit Reform provisions of the Omnibus Budget Reconciliation Act of 1990 to cover all credit-related budgetary outlays for a specific loan or guarantee program.

Restructure means to modify the terms of a loan. This includes modification of the interest rate or repayment term of the loan.

Security means assets pledged as collateral to assure repayment of a loan in the event there is a default on the loan.

§§ 1941.972–1941.974 [Reserved]

§ 1941.975 Loan eligibility requirements.

(a) An eligible organization must:

(1) Meet all requirements prescribed by APHIS to qualify for cost-share grant funds as determined by APHIS, (FSA will accept APHIS' determination as to an organization's qualification);

(2) Have appropriate charter and legal authority as a non-profit corporation to operate a boll weevil eradication program in any State and biological or geographic region of any State in which it operates;

(3) Possess the legal authority to enter into contracts, including debt instruments;

(4) Operate in an area in which producers have approved a referendum authorizing producer assessments and in which an active eradication or post-

eradication program is underway or scheduled to begin no later than the fiscal year following the fiscal year in which the application is submitted;

(5) Be unable to obtain, and certify in writing, that credit from private, commercial, or cooperative sources at reasonable rates and terms for loans for similar purposes and periods of time is not available; and

(6) Have the legal authority to pledge producer assessments as collateral for loans from FSA.

(b) Individual producers are not eligible for loans.

§ 1941.976 Eligible loan purposes.

(a) Loan funds may be used for any purpose directly related to boll weevil eradication activities, including, but not limited to:

(1) Purchase or lease of supplies and equipment;

(2) Operating expenses, including but not limited to, travel and office operations;

(3) Salaries and benefits;

(b) Loan funds may not be used to pay expenses incurred for lobbying, public relations, or related activities, or to pay interest on loans from the Agency.

§ 1941.977 Environmental requirements.

No loan will be made until all Federal and state statutory and regulatory environmental requirements have been complied with.

§ 1941.978 Non-discrimination requirements.

No recipient of a boll weevil eradication loan will directly, or through contractual or other arrangement, subject any person or cause any person to be subjected to discrimination on the basis of race, religion, color, national origin, gender, or other prohibited basis. Borrowers must comply with all applicable Federal laws and regulations regarding equal opportunity in hiring, procurement, and related matters.

§ 1941.979 Other Federal, State, and local requirements.

(a) In addition to the specific requirements in this subpart, loan applications will be coordinated with all appropriate Federal, State, and local agencies.

(b) Borrowers are required to comply with all applicable:

(1) Federal, State, or local laws;

(2) Regulatory commission rules; and

(3) Regulations which are presently in existence, or which may be later adopted including, but not limited to, those governing the following:

(i) Borrowing money, pledging security, and raising revenues for repayment of debt;

(ii) Accounting and financial reporting; and

(iii) Protection of the environment.

§ 1941.980 Interest rates, terms, security requirements, and repayment.

(a) *Interest rate.* The interest rate will be fixed for the term of the loan. The rate will be established by FSA, based upon the cost of Government borrowing for instruments on terms similar to that of the loan requested, and the impact of interest rate spreads on the amount to be charged to the program subsidy account at the time the loan is obligated.

(b) *Term.* The loan term will be based upon the needs of the applicant to accomplish the objectives of the loan program and the impact of the loan term on total program costs charged to the program subsidy account at the time of loan obligation, as determined by FSA, but may not exceed 10 years.

(c) *Security requirements.* (1) Loans must be adequately secured as determined by FSA. FSA may require certain security including, but not limited to the following:

(i) Assignments of assessments, taxes, levies, or other sources of revenue as authorized by State law;

(ii) Investments and deposits of the applicant; and

(iii) Capital assets or other property of the applicant or its members.

(2) In those cases in which FSA and another lender will hold assignments of the same revenue as collateral, the other lender must agree to a prorated distribution of the assigned revenue based upon the proportionate share of the applicant's debt the lender holds for the eradication zone from which the revenue is derived at the time of loan closing.

(d) *Repayment.* The applicant must demonstrate that income sources will be sufficient to meet the repayment requirements of the loan and pay operating expenses.

§ 1941.981–1980.985 [Reserved]

§ 1941.986 Application.

A complete application will consist of the following:

(a) An application for Federal assistance (available in any FSA office);

(b) Applicant's financial projections including a cashflow statement showing the plan for loan repayment;

(c) Copies of the applicant's authorizing State legislation and organizational documents;

(d) List of all directors and officers of the applicant;

(e) Copy of the most recent audited financial statements along with updates through the most recent quarter;

(f) Copy of the referendum used to establish the assessments and a certification from the Board of Directors that the referendum passed;

(g) Evidence that the officers and employees authorized to disburse funds are covered by an acceptable fidelity bond;

(h) Evidence of acceptable liability insurance policies;

(i) Statement from the applicant addressing any current or pending litigation against the applicant as well as any existing judgements;

(j) A copy of a resolution passed by the Board of Directors authorizing the officers to incur debt on behalf of the borrower;

(k) Any other information deemed to be necessary by FSA to render a decision.

§ 1941.987 [Reserved]

§ 1941.988 Funding applications.

Loan requests will be processed based on the date FSA receives the application. Loan approval is subject to the availability of funds. However, when multiple applications are received on the same date and available funds will not cover all applications received, applications from active eradication areas, which FSA determines to be most critical for the accomplishment of program objectives, will be funded first.

§ 1941.989 Loan closing.

(a) *Conditions.* The applicant must meet all conditions specified by the loan approval official in the notification of loan approval prior to closing.

(b) *Loan instruments and legal documents.* The borrower, through authorized representatives will execute all loan instruments and legal documents required by FSA to evidence the debt, perfect the required security interest in property and assets securing the loan, and protect the Government's interest, in accordance with applicable State and Federal laws.

(c) *Loan agreement.* A loan agreement between the borrower and FSA will be required. The agreement will set forth performance criteria and other loan requirements necessary to protect the Government's financial and programmatic interest and accomplish the objectives of the loan. Specific provisions of the agreement will be developed on a case-by-case basis to address the particular situation associated with the loan being made. However, all loan agreements will include at least the following provisions:

(1) The borrower must submit audited financial statements to FSA at least annually;

(2) The borrower will immediately notify FSA of any adverse actions such as:

(i) Anticipated default on FSA debt;

(ii) Potential recall vote of an assessment referendum; or

(iii) Being named as a defendant in litigation;

(3) Submission of other specific financial reports for the borrower;

(4) The right of deferral under 7 U.S.C. 1981a; and

(5) Applicable liquidation procedures upon default.

(d) *Fees.* The borrower will pay all fees for recording any legal instruments determined to be necessary and all notary, lien search, and similar fees incident to loan transactions. No fees will be assessed for work performed by FSA employees.

§ 1941.990 Loan monitoring.

(a) *Annual and periodic reviews.* At least annually, the borrower will meet with FSA representatives to review the financial status of the borrower, assess the progress of the eradication program utilizing loan funds, and identify any potential problems or concerns.

(b) *Performance monitoring.* At any time FSA determines it necessary, the borrower must allow FSA or its representative to review the operations and financial condition of the borrower. This may include, but is not limited to, field visits, and attendance at Foundation Board meetings. Upon FSA request, a borrower must submit any financial or other information within 14 days unless the data requested is not available within that timeframe.

§ 1941.991 Loan servicing.

(a) *Advances.* FSA may make advances to protect its financial interests and charge the borrower's account for the amount of any such advances.

(b) *Payments.* Payments will be made to FSA as set forth in loan agreements and debt instruments. The funds from extra payments will be applied entirely to loan principal. Extra payments will not extend the time for the next scheduled payment. Funds from other payments will be applied first to any advances, then to accrued interest, and when all accrued interest is paid, the remainder of the payment will be applied to loan principal.

(c) *Restructuring.* FSA may restructure loan debts; provided:

(1) the Government's interest will be protected,

(2) the restructuring will be performed within FSA budgetary restrictions, and

(3) the loan objectives cannot be met unless the loan is restructured. The provisions of part 1951, subpart S are not applicable to loans made under this section.

(d) *Default.* In the event of default, FSA will take all appropriate actions to protect its interest.

Signed at Washington, D.C., on May 12, 1997.

Dallas R. Smith,

Acting Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 97–12837 Filed 5–15–97; 8:45 am]

BILLING CODE 3410–05–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 931 and 934

[No. 97–38]

RIN 3069–AA63

Technical Amendment to Definition of Deposits in Banks or Trust Companies

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending the definition of the term ''deposits in banks or trust companies'' to expressly include a deposit in, or a sale of federal funds to, a branch or agency of a foreign bank located in the United States that is subject to the supervision of the Board of Governors of the Federal Reserve System (Board of Governors), as an investment eligible to fulfill the liquidity requirement imposed on the Federal Home Loan Banks (FHLBanks) by section 11(g) of the Federal Home Loan Bank Act (Bank Act).

EFFECTIVE DATE: The final rule will become effective on May 16, 1997.

FOR FURTHER INFORMATION CONTACT: Janice A. Kaye, Attorney-Advisor, Office of General Counsel, 202/408–2505, or Julie Paller, Senior Financial Analyst, Office of Policy, 202/408–2842, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Under section 11(e)(1) of the Bank Act, the FHLBanks have the power to accept deposits from their members, other FHLBanks, or instrumentalities of the United States. *See* 12 U.S.C. 1431(e)(1). To ensure that each FHLBank has sufficient liquid assets to meet deposit withdrawal demands, section 11(g) of the Bank Act imposes a liquidity requirement. *See id.* 1431(g). The liquidity requirement provides that each FHLBank must invest, upon such terms and conditions as the Finance Board may prescribe, an amount equal to the current deposits the FHLBank holds in specified types of as sets. *Id.* Among the assets specified in the Bank Act are ''deposits in banks or trust companies.'' *Id.* 1431(g)(2).

In 1978, the Finance Board's predecessor, the former Federal Home Loan Bank Board (FHLBB), defined by regulation the phrase ''deposits in banks or trust companies'' to include a deposit in another FHLBank, a demand account with a Federal Reserve Bank, or a deposit in a depository designated by a FHLBank's board of directors that is a member of either the Federal Reserve System or the Federal Deposit Insurance Corporation (FDIC).*See* 43 FR 46835, 46836 (Oct. 11, 1978), *codified at* 12 CFR 521.5 (superseded). When Congress abolished the FHLBB in 1989,*see* Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101–73, sec. 401, 103 Stat. 183 (Aug. 9, 1989), the Finance Board transferred the definition, without any change in substantive or technical matters, to § 931.5 of its regulations. *See* 54 FR 36757 (Aug. 28, 1989), *codified at* 12 CFR 931.5. This definition remained unchanged until September 1996, when the Finance Board adopted a final rule making clear that the term ''banks'' includes savings associations and including federal funds transactions as eligible to fulfill the liquidity requirement imposed on the FHLBanks by section 11(g) of the Bank Act. *See* 61 FR 40311 (Aug. 2, 1996), *codified at* 12 CFR 931.5. In February 1997, the Finance Board published for comment an interim final rule, which became effective upon publication, modifying the definition of ''deposits in banks or trust companies'' to include a deposit in, or a sale of federal funds to, a branch or agency of a foreign bank located in the United States that is subject to the supervision of the Board of Governors. *See* 62 FR 6860 (Feb. 14, 1997). The 30-day public comment period closed on March 17, 1997.*See id.* The one comment received in response to the interim final rule is discussed in Part II of the **SUPPLEMENTARY INFORMATION**.

II. Analysis of Public Comments and the Final Rule

For the reasons set forth in detail in the interim final rulemaking, the Finance Board believes that all U.S. branches and agencies of foreign banks should be treated equally, which was not the case under the prior rule. Accordingly, the Finance Board is adopting the amendments to the definition of ''deposits in banks or trusts'' made by the interim final rule without substantive change. In addition,

as part of its ongoing regulatory reorganization, the Finance Board is redesignating the definition to part 934 of its regulations, which concerns the operations of the FHLBanks.*See* 12 CFR part 934.

As amended, the definition of the term ''deposits in banks or trusts'' includes FHLBank deposits in any U.S. branch or agency of a foreign bank that has legal authority to accept deposits or engage in federal funds transactions as eligible investments for purposes of section 11(g) of the Bank Act. To achieve this result, the Finance Board has added a new paragraph (c)(3) that includes expressly a deposit in, or federal funds transactions with, a U.S. branch or agency of a foreign bank that is subject to the supervision of the Board of Governors and is designated by a FHLBank's board of directors. The terms ''branch,'' ''agency,'' and ''foreign bank'' have the same meaning as in the International Banking Act of 1978, as amended. *See* 12 U.S.C. 3101 (1), (3), (7).

The commenter urged the Finance Board to encourage the FHLBanks to place deposits with small, domestic FDIC-insured financial institutions rather than U.S. branches and agencies of foreign banks in order to provide these community banks with needed liquidity and to facilitate the FHLBanks' mission of extending credit for housing in the United States. Because provisions of federal law require the treatment of all U.S. branches and agencies of foreign banks to be similar to the treatment of domestic depository institutions, the Finance Board believes that the amendment permitting FHLBank deposits in U.S. branches and agencies of foreign banks is consistent with federal law. The commenter also suggested that placing deposits in uninsured U.S. branches and agencies of foreign banks might create additional unnecessary risk for the FHLBanks. As pointed out in the interim final rulemaking, a foreign bank may establish a U.S. branch or agency only with the prior approval of the Board of Governors and an appropriate licensing authority, *i.e.*, either the Comptroller of the Currency or a state banking regulator, and such branches and agencies are subject to the supervision of the Board of Governors and must meet many of the rules and regulations, including safety and soundness rules and regulations, applicable to domestic commercial banks. In addition, because FHLBank deposits generally exceed the $100,000 FDIC deposit insurance limit, and U.S. branches of foreign banks principally accept only wholesale deposits, FDIC insurance would be of little benefit, and the absence thereof would pose little additional risk, to the FHLBanks.

III. Notice and Public Participation

The Finance Board finds that the notice and comment procedure required by the Administrative Procedure Act is unnecessary, impracticable, and contrary to the public interest in this instance because the changes made by the final rule are technical in nature and apply only to the FHLBanks. *See* 5 U.S.C. 553(b)(3)(B). In addition, as explained above, the changes made by the final rule are necessary to comply with various provisions of federal law.

IV. Effective Date

For the reasons stated in part III above, the Finance Board for good cause finds that the interim final rule should become effective on May 16, 1997. *See* 5 U.S.C. 553(d)(3).

V. Regulatory Flexibility Act

The Finance Board is adopting the technical amendment in the form of a final rule and not as a proposed rule. Therefore, the provisions of the Regulatory Flexibility Act do not apply. *See* 5 U.S.C. 601(2), 603(a).

VI. Paperwork Reduction Act

This final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501, *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects

12 CFR Part 931

Banks, Banking, Federal home loan banks.

12 CFR Part 934

Federal home loan banks, Securities, Surety bonds.

Accordingly, the Federal Housing Finance Board hereby adopts the interim final rule amending 12 CFR part 931 that was published at 62 FR 6860 on February 14, 1997 as a final rule with the following changes, and amends 12 CFR part 934 of the Code of Federal Regulations as follows:

PART 931—DEFINITIONS

1. Revise the authority citation for part 931 to read as follows:

Authority: 12 U.S.C. 1422a and 1422b.

PART 934—OPERATIONS OF THE BANKS

1. Revise the authority citation for part 934 to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1431(g), and 1442.

§§ 934.4 through 934.14 [Redesignated as §§ 934.5 through 934.15]

2. Redesignate §§ 934.4 through 934.14 as §§ 934.5 through 934.15, respectively.

§ 931.5 [Redesignated as § 934.4]

3. Redesignate § 931.5 as § 934.4 and revise to read as follows:

§ 934.4 Deposits in banks or trust companies.

For purposes of section 11(g) of the Act, the term ''deposits in banks or trust companies'' means:

(a) A deposit in another Bank;

(b) A demand account in a Federal Reserve Bank; and

(c) A deposit in, or a sale of federal funds to:

(1) An insured depository institution, as defined in section 2(12)(A) of the Act, that is designated by a Bank's board of directors;

(2) A trust company that is a member of the Federal Reserve System or insured by the Federal Deposit Insurance Corporation, and is designated by a Bank's board of directors; or

(3) A U.S. branch or agency of a foreign bank, as defined in the International Banking Act of 1978, as amended (12 U.S.C. 3101 *et seq.*), that is subject to the supervision of the Board of Governors of the Federal Reserve System, and is designated by a Bank's board of directors.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairperson.

[FR Doc. 97–12550 Filed 5–15–97; 8:45 am]

BILLING CODE 6725–01–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 744

[Docket No. 970428099–7099–01]

RIN 0694–AB60

Revisions to the Export Administration Regulations: Addition of Bharat Electronics, Ltd., (aka Baharat Electronics, Ltd.) India, to Entity List

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Export Administration Regulations (EAR) provide that the Bureau of Export Administration (BXA) may inform exporters, individually or through amendment to the EAR, that a license is required for exports or reexports to certain entities. The EAR contains a list of such entities. This rule adds Bharat Electronics LTD, (aka Baharat Electronics, Ltd.) located in India, to the entity list, and requires a license for exports or reexports of all items subject to the EAR.

EFFECTIVE DATE: This rule is effective May 16, 1997.

FOR FURTHER INFORMATION CONTACT: Eileen M. Albanese, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482–0436.

SUPPLEMENTARY INFORMATION:

Background

General Prohibition Five (§ 736.2(b)(5) of the EAR) prohibits exports to certain end-users or end-uses without a license. In the form of Supplement No. 4 to part 744, BXA maintains an ''Entity List'' to provide notice informing the public of certain entities subject to such licensing requirements.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, this rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended, as follows:

1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

PART 744—[AMENDED]

2. Supplement No. 4 to part 744 is amended by adding, in alphabetical order, the following entity:

''Bharat Electronics LTD, (aka Baharat Electronics, Ltd.) located in India, for all items subject to the EAR''.

Dated: May 12, 1997.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 97–12805 Filed 5–15–97; 8:45 am]

BILLING CODE 3510–33–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release Nos. IC–22658; IS–1080; File No. S7–23–95]

RIN 3235–AE98

Custody of Investment Company Assets Outside the United States

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting amendments to the rule under the Investment Company Act of 1940 that governs the custody of investment company assets outside the United States. The amendments provide investment companies with greater flexibility in managing their foreign custody arrangements consistent with the safekeeping of investment company assets. The amendments also expand the class of foreign banks and securities depositories that may serve as investment company custodians.

EFFECTIVE DATE: The amendments will become effective June 16, 1997.

FOR FURTHER INFORMATION CONTACT: Robin S. Gross, Staff Attorney, or Nadya B. Roytblat, Assistant Chief, Office of Regulatory Policy, at (202) 942–0690, Securities and Exchange Commission, Division of Investment Management, 450 Fifth Street, N.W., Mail Stop 10–2, Washington, D.C. 20549. Requests for formal interpretive advice should be directed to the Office of Chief Counsel at (202) 942–0659, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–6, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') today is adopting amendments to rule 17f–5 (17 CFR 270.17f–5) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Investment Company Act'' or ''Act'').

Table of Contents

I. Executive Summary

The Commission is amending rule 17f–5 under the Investment Company Act to provide registered management investment companies (''funds'') greater flexibility in managing their foreign custody arrangements. The amendments expand the class of foreign banks and securities depositories that may serve as custodians of fund assets by eliminating capital requirements that have precluded funds from using otherwise suitable custodians without first obtaining administrative relief from the Commission. The amended rule requires instead that the selection of a foreign custodian be based on whether the fund's assets will be subject to reasonable care if maintained by that custodian, after considering all factors relevant to the safekeeping of fund assets, including the custodian's financial strength, its practices and procedures, and internal controls.

The amendments eliminate the consideration of ''prevailing country risks,'' *i.e.*, risks associated with investment in a particular country rather than placing assets with a particular custodian. The Commission has concluded that prevailing country risks are investment risks appropriately considered by a fund's board or investment adviser when deciding whether the fund should invest in a particular country, rather than custodial risks to be addressed in rule 17f–5.

The amendments also permit fund directors to play a more traditional oversight role with respect to the custody of fund assets overseas. Directors may delegate their duties to select a foreign custodian and monitor a fund's foreign custody arrangements to the fund's investment adviser, officers, or a U.S. or foreign bank, and are no longer required to approve foreign custody arrangements annually.

II. Introduction and Background

A growing number of funds invest their assets overseas.[1] Investing in foreign markets may present a fund with significant operational issues, one of which is the availability of appropriate custodians for fund assets. Maintaining securities outside of their primary market can add significant costs to investing in that market and may preclude foreign investment.[2] The availability of custodial arrangements in foreign markets where a fund invests, therefore, is very important.

Section 17(f) of the Act generally permits a fund to maintain its assets only in the custody of a U.S. bank and its foreign branches, a member of a U.S. securities exchange, the fund itself, or a U.S. securities depository.[3] Before rule 17f–5 was adopted, funds seeking to maintain their assets outside the United States could use only foreign branches of U.S. banks as their foreign custodians.[4]

In 1984 the Commission adopted rule 17f–5, which expanded the foreign custody arrangements available to funds.[5] The rule permits funds to maintain their assets overseas, subject to detailed findings by the fund's board of directors with respect to the decision to place fund assets in a particular country and with respect to each foreign custody arrangement.[6] Fund assets may be placed in the custody of an ''eligible foreign custodian'': (i) A foreign bank or trust company (''foreign bank'') that has more than $200 million in shareholders' equity; (ii) a majority-owned subsidiary of a U.S. bank or bank holding company (''U.S. bank subsidiary'') that has more than $100 million in shareholders' equity; or (iii) a foreign securities depository that operates either the central system for the handling of securities in that country or a transnational system for the central handling of securities.[7] Finally, the fund's foreign custody arrangements must be governed by a written contract that must be approved by the fund's board of directors and contain certain specified provisions.[8]

By 1995 the Commission had become concerned that the rule's provisions unnecessarily restricted foreign custody arrangements. In addition, the Commission became concerned that the rule placed unnecessary burdens on fund directors that detracted from the amount of time they could devote to the many other important duties they are assigned under the Act.[9] In July 1995, the Commission proposed amendments to rule 17f–5 in response to these concerns. To make the rule's requirements for board involvement in custody matters more consistent with the board's traditional oversight role, the proposed amendments would have permitted fund boards to delegate their

[1] Based on available data, the Commission staff estimates that at the end of February 1997, approximately 1,666 portfolios with assets of nearly $411 billion have investment objectives that contemplated significant foreign investments. *See also* Karen Damato, *Mutual Funds Drew $24 Billion During January*, Wall St. J., Feb. 13, 1997, at C1 (discussing recent increased investor interest in funds that invest overseas).

[2] Moving securities away from their primary market may entail additional costs in connection with hiring a servicing agent in the primary locality to collect and disseminate information with respect to the securities, transferring the securities to an eligible custodian and procuring insurance for possible loss in transit, and exchanging coupons for interest or dividends or for new shares in connection with a rights offering. *See* Exemption for Custody of Securities by Foreign Banks and Foreign Securities Depositories, Investment Company Act Release No. 12354 (Apr. 5, 1982) (47 FR 16341, 16342 (April 16, 1982)) (hereinafter 1982 Proposing Release). Funds also may be prevented from, or delayed in, selling the securities if they are unable to make timely delivery to prospective purchasers in the primary market. *Id*. In addition, the best price for a foreign security typically may be obtained in its primary market. *Id*.

[3] 15 U.S.C. 80a–17(f). Bank custodians must be subject to federal or state regulation and have at least $500,000 in aggregate capital, surplus, and undivided profits. Investment Company Act sections 2(a)(5) (15 U.S.C. 80a–2(a)(5)) (defining bank), and 26(a)(1) (15 U.S.C. 80a–26(a)(1)) (containing the $500,000 capital requirement). *See also* rule 17f–1 (17 CFR 270.17f–1) (custody by members of a U.S. securities exchange), rule 17f–2 (17 CFR 270.17f–2) (custody by funds themselves), rule 17f–4 (17 CFR 270.17f–4) (custody by U.S. securities depositories), and rule 17f–6 (17 CFR 270.17f–6) (custody by futures commission merchants and commodity clearing organizations).

[4] *See* 1982 Proposing Release, *supra* note 2, at n.7 and accompanying text.

[5] Exemption for Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 14132 (Sept. 7, 1984) (49 FR 36080 (Sept. 14, 1984)) (release adopting rule 17f–5) (hereinafter 1984 Adopting Release). For an administrative history of rule 17f–5, *see* Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 21259 (July 27, 1995) (60 FR 39592 (Aug. 2, 1995)) (hereinafter Proposing Release) at n.8.

[6] The fund's board of directors must determine that the custody arrangements are consistent with the best interests of the fund and its shareholders (the ''best interests determination''). Rule 17f–5(a)(1)(i) through (iii). Notes to the current rule enumerate certain factors that the fund's board should consider in making the best interests determination. The rule also requires the board to monitor the fund's foreign custody arrangements and to approve each arrangement at least annually. Rule 17f–5(a)(2), (3).

[7] Rule 17f–5(c)(2) (i) through (iv).

[8] Rule 17f–5(a)(1)(iii) (A) through (F).

[9] *See* Proposing Release, *supra* note 5, at nn.15–17 and accompanying text.

responsibilities to approve and monitor foreign custody arrangements. To better reflect modern commercial custody practices, the proposed amendments would have revised the standard to be used in evaluating a fund's foreign custody arrangements to one that focuses on whether the custodial arrangement afforded ''reasonable protection'' for fund assets.[10] The proposed amendments also would have expanded the class of foreign banks, U.S. bank subsidiaries and securities depositories that could serve as fund custodians, and eliminated the requirement that the fund's foreign custody contract contain certain specified provisions.

The Commission received letters from 28 commenters. The commenters generally supported the proposed amendments, particularly those provisions that would have permitted a fund's board to delegate its responsibilities to select and monitor foreign custodians to the fund's investment adviser, officers, or a U.S. or foreign bank. The Commission is adopting the proposed amendments with several modifications that reflect, in part, the commenters' suggestions. The Commission believes that the amendments, as adopted, will provide significant additional flexibility for funds without reducing the level of investor protection afforded by the current rule.

III. Discussion

A. Decision to Place Fund Assets in a Country

1. Background

Maintaining fund assets outside the United States involves risks that relate to the particular custodian (*e.g.*, the risk that the custodian selected will not exercise the appropriate level of care with regard to fund assets, or that the custodian may not have the financial strength, practices, and procedures in place to safeguard the fund's assets).[11] In addition, maintenance of fund assets overseas exposes the fund to systemic risks that may affect the ability of any custodian to safeguard fund assets in that country (''prevailing country risks''). For example, a country's inefficient settlement practices constitute a risk of investing in that country, regardless of the level of care that can be provided by a particular custodian. Both of these types of risks have been addressed by rule 17f–5, and were to be addressed by the proposed amendments.[12]

The Proposing Release requested comment whether the rule should continue to address prevailing country risks.[13] A number of commenters suggested that it should not. These commenters asserted that prevailing country risks are inherently investment risks because they are an inextricable part of the fund's decision to invest in foreign securities. These commenters therefore urged the Commission to treat the decision to place fund assets in a country as a decision to be made by the fund's board or its investment adviser in the context of deciding to invest in that country, and as separate from the establishment of particular foreign custody arrangements under rule 17f–5.

2. The Amended Rule

These comments have caused the Commission to reconsider the proposed approach. Once a decision has been made to invest in a country, prevailing country risks cannot be avoided, except by maintaining assets outside of the country—an alternative that is often not possible or practicable. For that reason, prevailing country risks would seem inherently a part of the investment risks associated with the decision to invest in a particular country and should be considered by a fund's board or investment adviser before the fund invests in a foreign country. Inclusion of prevailing country risks in rule 17f–5, therefore, would appear inconsistent with the nature of those risks.

The Commission also is concerned that restrictions on a fund's approach to prevailing country risks may have the effect of denying funds and their shareholders overseas investment opportunities, particularly in developing markets. Such a result is inconsistent with the overall approach of the Investment Company Act, which generally does not limit a fund's ability to assume investment risks.[14] Moreover, such a result is not mandated by section 17(f), the legislative history of which suggests that the section was intended primarily to prevent misappropriation of fund assets by persons having access to assets of the fund.[15]

Based upon these considerations, the Commission has decided not to address prevailing country risks in rule 17f–5. Rather, the Commission believes that such risks should be carefully considered by a fund's board or its investment adviser before the fund invests in a foreign country, and, if material, disclosed to fund investors.[16] Accordingly, the amended rule focuses exclusively on the selection and monitoring of an eligible foreign custodian.

The amendments are not intended and should not be construed, however, to diminish the importance of considering the financial infrastructure of a foreign country when deciding to invest in that country. For example, the country's settlement systems and practices can have a significant effect on the liquidity and investment characteristics of fund assets.[17] The

[10] The factors that the rule specifies should be considered in this regard would have been revised to focus on safekeeping rather than investment risks (particularly the factors relating to the decision to place fund assets in a country).

[11] These issues also may be present when a fund's assets are maintained in the United States. Section 17(f), however, by limiting domestic custody arrangements to U.S. banks and certain other arrangements subject to Commission regulation, provides some assurance that custody arrangements will have appropriate safeguards. *See supra* note 3 and accompanying text.

[12] Rule 17f–5 currently requires a fund's board of directors to determine that maintaining the fund's assets in a particular country is consistent with the best interests of the fund and its shareholders. Rule 17f–5(a)(1)(i). Note 1 to the rule requires the board, in making this determination, to consider the effects of applicable foreign law on the safekeeping of fund assets; the likelihood of expropriation, nationalization, freezing, or confiscation of the fund's assets; and any reasonably foreseeable difficulties in repatriating the fund's assets kept overseas.

The proposed amendments would have narrowed the scope of the prevailing country risks determination to factors that have a closer nexus to safekeeping considerations. A fund's board of directors or its delegate would have been required to determine that custody of the fund's assets in a particular country could be maintained in a manner that provided reasonable protection for the fund's assets after considering all factors relevant to the safekeeping of such assets including: (i) The prevailing practices in the country for the custody of the fund's assets; (ii) whether the country's laws will affect adversely the safekeeping of the fund's assets, such as by restricting the access of the fund's independent public accountants to a custodian's books and records, or by affecting the fund's ability to recover its assets in the event of a custodian's bankruptcy or the loss of assets in a custodian's control; and (iii) whether special arrangements that mitigate the risks of maintaining the fund's assets in the country would be used.

[13] Proposing Release, *supra* note 5, at nn. 62–65 and accompanying text.

[14] *But see, e.g.*, rule 2a–7 under the Investment Company Act (17 CFR 270.2a–7) (establishing various limitations on permissible investments for money market funds).

[15] *See* Proposing Release, *supra* note, at n.5; *Thomas Harman*, Eligible Foreign Custodians and the Investment Company Act of 1940, 46 Bus. Law 1377 (1991).

[16] Funds' disclosure obligations are governed by other provisions of the securities laws. *See, e.g.*, Item 4(c) of Form N–1A (17 CFR 239.15A) (the registration form for open-end funds), and Item 8.3 of Form N–2 (17 CFR 274.11a–1) (the registration form for closed-end funds). These Items require disclosure in the fund's prospectus of the principal risk factors associated with investing in the fund. *See also* Proposing Release, *supra* note, at nn.175, 176 and accompanying text.

[17] A country's settlement systems, for example, may not require that payment for securities purchased by a fund be made only upon delivery of those securities, or that securities sold by a fund be delivered only upon receipt of payment for the

Continued

amendments similarly are not intended to diminish the contribution that the fund's global custodian may make in deciding to place fund assets in a foreign country.[18] Commenters representing funds and custodians agreed that global custodians are a ''primary source of information concerning the financial systems and practices of foreign markets.'' [19] The Commission, therefore, expects that fund boards and investment advisers, in making foreign investment decisions, will continue to seek and rely on information and opinions provided by the fund's custodian when the custodian has experience with regard to foreign custody services.[20]

B. Delegation of Board Responsibilities

The Commission proposed amending the rule to permit a fund's board to delegate its responsibilities to select, contract with, and monitor foreign custodians to the fund's investment adviser, officers or a U.S. or foreign bank. This approach was intended to permit fund boards to play a more traditional oversight role in connection with a fund's foreign custody arrangements.[21] This approach also sought to recognize that in discharging their responsibilities under the rule, directors rely heavily on the analysis and recommendations of the fund's investment adviser, legal counsel and global custodian.[22] Most commenters strongly supported the proposed amendments permitting delegation of board responsibilities and they are adopted substantially as proposed.[23]

1. Selecting Delegates

Under the proposed amendments, the board would have been required to find that it is reasonable to rely on the delegate to perform the delegated responsibilities related to the fund's foreign custody arrangements. Most commenters that addressed this aspect of the proposal supported the proposed standard, but suggested that the Commission discuss the factors to be considered in determining whether reliance on a delegate is reasonable.

The Commission is adopting the proposed reasonable reliance standard.[24] As stated in the Proposing Release, factors typically involved in making this determination include the expertise of the delegate and, if applicable, the delegate's intended use of third party experts in performing its responsibilities.[25] Other relevant factors may include, for example, the board's ability to monitor the delegate's performance or, in the case of a delegate that is a foreign bank, the fund's ability to obtain jurisdiction over the delegate in the U.S. should problems arise in the delegate's performance of its duties.[26] The delegate's financial strength also is relevant in analyzing its ability to perform its responsibilities and indemnify the fund if the delegate fails to adhere to the requisite standard of care.[27]

Certain commenters suggested that the board's responsibilities under the rule be delegable solely to the fund's custodian bank as the entity most qualified to provide such services. The Commission continues to believe that the board should have the flexibility to

securities (''delivery vs. payment procedures''). Delivery vs. payment procedures can afford significant protections from losses if the other party to a transaction defaults on its obligations. *See, e.g.*, Group of Thirty, Clearance and Settlement Systems in the World's Securities Markets 11 (Mar. 1989). The fact that a foreign market's settlement practices do not incorporate these procedures should be carefully considered by the fund's board or investment adviser in deciding to invest in the country.

A country's settlement systems and practices also may present problems in accounting for fund assets (*e.g*, establishing whether the fund owns the securities or has received dividends or other entitlements). *See, e.g.*, Buttonwood International Group, *Emerging Markets on the Net: India-Securities Infrastructure a Big Problem for Investors*, at http://www.buttonwood.com/p–i/1996es/india.html (discussing, among other things, difficulties resulting from the process of registering changes in ownership of securities).

[18] *See, e.g.*, John Paul Lee & Richard Schwartz, Global Custody: A Guide for the Nineties (1990) (noting that today the safekeeping of a fund's foreign investments typically is effected through the fund's primary or ''global'' custodian, which uses a world-wide network of custodians with which it has established relationships); Gordon Altman Butowsky Weitzen Shalov & Wein, a Practical Guide to the Investment Company Act 30 (1993) (indicating that the fund's custodian typically provides the board with information concerning foreign legal restrictions and the qualifications of foreign custodians).

[19] Letter from Baker & McKenzie to Jonathan G. Katz, Secretary, Securities and Exchange Commission (Nov. 3, 1995), File No. S7–23–95, at 7–8; *see also* Letter from the Investment Company Institute to Jonathan G. Katz, Secretary, Securities and Exchange Commission (Oct. 5, 1995), File No. S7–23–95, at 9. Custodian commenters suggested that their role in this regard may expand under the amended rule and emphasized that funds and their global custodians ''are partners, not adversaries, in seeking to ensure that fund assets held outside the United States are properly safeguarded.'' Letters from Baker & McKenzie to Jonathan G. Katz, Secretary, Securities and Exchange Commission (June 7, 1996 and Sept. 10, 1996), File No. S7–23–95, at 3 and 2, respectively.

[20] The Commission always has recognized the extent to which fund boards rely on third party experts in addressing prevailing country risks. *See* 1984 Adopting Release, *supra* note 5, at n.12 and accompanying text. The failure of a fund's board to obtain information from reliable sources concerning the financial systems and practices of foreign markets in which the fund makes significant investments may in certain instances violate the directors' duty of care under applicable corporate and fiduciary law. *See, e.g.*, Task Force on the Fund Director's Guidebook, Federal Regulation of Securities Committee, Section of Business Law, American Bar Association, ''Fund Director's Guidebook,'' 52 Bus. Law. 229, 237 (1996) (''Compliance with the duty of care under state law is based on diligence applied to the ordinary and extraordinary needs of the fund, including * * * obtaining and reviewing information on which to base decisions, and making appropriate inquiries under particular circumstances.'') The Commission does not believe that the amendments will discourage fund boards and investment advisers from seeking the type of information they need to fulfill their responsibilities. *Cf.* Letter from State Street Bank to Jonathan G. Katz, Secretary, Securities and Exchange Commission (Nov. 3, 1995), File No. S7–23–95, at 11 (suggesting that ''competitive forces'' may place incentives on custodian banks to assume greater responsibility for decisions to place fund assets in foreign countries). The amendments do not affect in any way the extent to which a custodian's opinions and reports may be relied upon by the fund's board or the investment adviser, or the custodian's legal liability to the fund with respect to any such opinions or reports.

[21] *See* Proposing Release, *supra* note 5, at nn.24–26 and accompanying text.

[22] *See supra* notes 18–20 and accompanying text. *See also*, Glorianne Stromberg, Regulatory Strategies for the Mid-'90s; Recommendations for Regulating Investment Funds in Canada (prepared for the Canadian Securities Administrators) 242 (Jan. 1995) (suggesting it is unlikely that an individual fund or its investment adviser will have the expertise or bargaining power to deal with numerous and varied foreign custodians throughout the world).

[23] While commenters generally supported delegation, a number of commenters suggested that custodian banks should not serve as delegates for the decision to place fund assets in a country. It is not necessary to address this issue in the amended rule, however, because the decision to place fund assets in the country is outside the scope of the amended rule. *See supra* Section III.A. of this Release.

[24] Amended rule 17f–5(b)(1) (17 CFR 270.17f–5(b)(1)).

[25] *See* Proposing Release, *supra* note 5, at n.28 and accompanying text.

[26] If the delegate is a foreign bank, it must be a ''qualified foreign bank'' (*i.e.*, regulated as either a banking institution or trust company by the government of the country under whose laws it is organized or any agency thereof). *See* amended rule 17f–5(d)(6) (17 CFR 270.17f–5(d)(6)). U.S. bank delegates must be subject to federal or state regulation by virtue of the definition of bank in section 2(a)(5) of the Act (15 USC 80a–2(a)(5)).

[27] The amendments, as proposed, would have required a U.S. bank delegate to have an aggregate of capital, surplus and undivided profits (''CSP'') of $500,000—the aggregate CSP required for a U.S. bank to serve as a custodian for fund assets. *See* section 17(f)(1) of the Act (15 U.S.C. 80a–17(f)(1)) (requiring bank custodians to meet the qualifications prescribed by section 26(a) of the Act (15 U.S.C. 80a–26(a)) for the trustees of unit investment trusts). The Proposing Release requested comment whether foreign bank delegates should meet specific capital standards. Commenters were divided on this point. One commenter supported a minimum capital requirement for foreign bank delegates to avoid the inequity of subjecting only U.S. banks to minimum capital requirements. Other commenters suggested that, since the financial strength of a foreign custodian would be a factor in deciding to use it as a custodian for fund assets, the aggregate CSP requirement, or other minimum financial standards for delegates, were unnecessary. Consistent with the approach of focusing on financial strength, rather than specified minimum capital (as discussed in Section III.D.1 of this Release), the amended rule does not require a U.S. bank delegate to have a specified CSP.

delegate foreign custody decisions to the entity it determines is in the best position to evaluate the particular delegated aspects of the fund's foreign custody arrangements.[28] For example, under the delegation provisions of the amended rule, one delegate may assume responsibility for evaluating bank custodians, while another may be responsible for evaluating depositories.

The Commission notes that the terms of the delegation must be agreed upon by the board and the delegate. The potential delegate must agree to assume the delegated responsibilities and the delegate and the fund's board may agree to guidelines and procedures under which the delegate will exercise its responsibilities. If a foreign country, for example, has a depository that, as a practical matter, must be used if the fund is going to place assets in that country (''compulsory depository''), the fund's board may conclude that the investment adviser would be the appropriate delegate for evaluating the compulsory depository.[29]

2. Delegate's Standard of Care

The Proposing Release requested comment whether the rule should provide a standard of care to be used by a delegate in making custodial decisions. Several commenters suggested that the rule should provide guidance in this regard. These commenters expressed the view that if the Commission did not clarify this aspect of the amendments, the delegation provisions would be unworkable because potential delegates would be unwilling to risk being held liable for losses despite exercising reasonable care.

The amended rule requires a delegate to exercise reasonable care in performing the delegated duties.[30] The rule makes clear that reasonable care, in this context, requires the delegate to exercise the care, prudence and diligence that a person having the responsibility for the safekeeping of fund assets would exercise.[31] This provision is designed to ensure that delegates adhere to a threshold standard of care. Fund boards and their delegates may agree that the delegate should adhere to a higher standard of care.

3. Board Oversight; Delegate Reporting

The Commission is amending the rule, as proposed, to no longer require the board to review or approve the fund's foreign custody arrangements annually. The amended rule does require the delegate to provide the board with written reports notifying it of the placement of the fund's assets with a particular custodian.[32] The delegate also must provide written reports to the board concerning any material change in the fund's foreign custody arrangements (''material change reports'').[33] These reports are intended to facilitate the board's oversight of the delegate's performance. Commenters generally agreed that delegate reporting is desirable.

The proposed amendments would have required the reports to be provided no later than the next regularly scheduled board meeting following the event necessitating the report. One commenter expressed concerns about the application of this requirement to fund boards that do not have regularly scheduled meetings. The amended rule requires material change reports to be provided at such times as the fund's board deems reasonable and appropriate based on the circumstances of the fund's foreign custody arrangements.[34] This provision should provide fund boards with the flexibility to tailor the reporting requirements to the fund's particular circumstances. Consistent with the provision, a fund's board could, for example, require the reports at the next regularly scheduled board meeting, as originally proposed. The board also may require the reports more or less frequently (*e.g.*, within 30, 60 or 90 days of the event or annually) as the board determines is reasonable and appropriate.

C. Selecting, Contracting With, and Monitoring a Foreign Custodian

1. Selecting a Foreign Custodian

a. General Standard

Rule 17f–5 currently requires a fund's board to find that the fund's foreign custody arrangements are consistent with the best interests of the fund and its shareholders.[35] Consistent with the goal of requiring foreign custody arrangements to be evaluated based on the level of safekeeping they will afford fund assets, the Commission proposed amending the rule to require a finding that the fund's foreign custody arrangement will provide ''reasonable protection'' for fund assets. The proposed reasonable protection standard was intended to facilitate evaluation of foreign custody arrangements by focusing exclusively on the safekeeping of fund assets.

Several commenters viewed the proposed reasonable protection standard as a results-oriented standard that could effectively render the entity making the determination a guarantor against any loss of fund assets in foreign custody. A number of commenters recommended that the rule require instead that the selection of a fund's foreign custodian be based on a determination that the custodian will provide ''reasonable care'' for the fund's assets in its custody (''reasonable care standard''). The commenters suggested that this standard of care would be more consistent with the way in which custodians traditionally have carried out their responsibilities.[36] Commenters also noted that a reasonable protection

[28] Similarly, a fund's board could select as delegate the entity having the greatest expertise with a geographic region. *See* Andrew Sollinger, *Breaking Away,* Institutional Investor 171 (Sept. 1991) (noting that U.S. custodians may use different subcustodian networks for different geographic regions).

[29] The amendments, as proposed, would have expressly addressed compulsory depositories, and would have required the evaluation of a compulsory depository to be made in the context of the decision to place fund assets in that country. This approach was designed to address the expectation that, because of the depository's compulsory nature, the fund's custodian would decline to assume the responsibility for evaluating it. The Commission recognized, however, that conceptually the decision to use a compulsory depository appeared to fall within the scope of the rule's provisions governing the selection of particular custodians. The rule, as proposed to be amended, would have required the fund's board or its delegate to make the same findings with respect to a compulsory depository as those required for the selection of any other type of foreign custodian. *See* Proposing Release, *supra* note 5, at n.71. Because the amended rule does not address the decision to place fund assets in a country, the Commission has concluded that it is not necessary for the rule to distinguish between compulsory depositories and other types of foreign custodians.

[30] Amended rule 17f–5(b)(3) (17 CFR 270.17f–5(b)(3)).

[31] A substantially similar standard of care was suggested by fund and custodian commenters. *See also infra* note 36, (discussing a custodian's standard of care under Article 8 of the Uniform Commercial Code (''U.C.C.'')).

[32] Amended rule 17f–5(b)(2) (17 CFR 270.17f–5(b)(2)).

[33] *Id.* A material change in the fund's arrangements would include, for example, a delegate's decision to remove the fund's assets from a particular custodian. A material change also could include events that may adversely affect a foreign custodian's financial or operational strength, such as a change in control resulting from a sale of the custodian's operations. If appropriate, the material change report would discuss the reasons for continuing to maintain the fund's assets with a particular custodian.

[34] Amended rule 17f–5(b)(2) (17 CFR 270.17f–5(b)(2)).

[35] Rule 17f–5(a)(2).

[36] For example, the newly revised Article 8 of the U.C.C. (which has been adopted in 29 states, as of December 1996), addresses the duty of care to be exercised by a custodian (or other ''securities intermediary''). Section 8–504 provides that in the absence of an agreement, the custodian should exercise ''due care in accordance with reasonable commercial standards.'' (Section 8–509 recognizes that regulatory law may impose a higher standard.) Note 4 to Section 8–504 observes that ''(the duty of care includes both care in the intermediaries' own operations and care in the selection of other intermediaries through whom the intermediary holds the assets in question.''

standard would suggest that the level of custodial protection that is deemed ''reasonable'' would vary from fund to fund.

In proposing the reasonable protection standard, the Commission emphasized that the delegate would not be required to find that fund assets could never be lost while in the foreign custodian's possession. Instead, the focus would have been on the reasonableness of a custodian's protections for the fund's assets, based on all relevant factors and, in particular, those factors that would have been specified in the rule.[37] Thus, the proposed standard was not intended to be substantially different than the reasonable care standard suggested by the commenters. Nonetheless, recognizing the benefits of using terminology currently used and commonly understood by participants in fund custodial arrangements, the Commission has decided to adopt a ''reasonable care'' standard as suggested by commenters. The use of this terminology also underscores the objective nature of the standard for determining whether a fund's custodial arrangements in a particular country satisfy a ''reasonableness'' standard.

The amended rule requires the fund's board or its delegate (the ''Foreign Custody Manager'') to determine that the fund's assets will be subject to reasonable care if maintained with the foreign custodian.[38] This determination would be based on standards applicable to custodians in the relevant market.[39] In making this determination, the Foreign Custody Manager must consider all factors relevant to the safekeeping of fund assets, including the custodian's practices, procedures and internal controls, its financial strength, reputation and standing, and whether the fund will be able to obtain jurisdiction over and enforce judgments against the custodian.[40] The Commission notes that the reasonable care standard is merely a threshold standard, and that fund boards and their delegates have the flexibility to agree that the delegate will select foreign custodians that will exercise a higher degree of care with respect to fund assets.

b. Specified Factors

The amended rule requires the Foreign Custody Manager to consider all factors relevant to the safekeeping of fund assets. The rule identifies several specific factors that the Foreign Custody Manager must consider when selecting a foreign custodian.

i. Practices, Procedures and Internal Controls

The amended rule states that the foreign custodian's practices, procedures, and internal controls are among the factors that must be considered in deciding whether the fund's assets will be subject to reasonable care.[41] As noted in the Proposing Release, the protections provided by custodians within a foreign country can vary widely.[42] The amended rule specifies certain additional factors that should be considered in assessing the custodian's internal controls: The physical protections the custodian makes available for certificated securities (*e.g.*, the use of vaults or other facilities), the custodian's method of keeping custodial records (*e.g.*, the use of computers, microfilm or paper records), as well as security and data protection practices (*e.g.*, alarm systems and the use of pass codes and back-up procedures for electronically stored information). The proposed amendments would have treated these factors as related to the decision to place fund assets in a country.[43] Commenters suggested, and the Commission agrees, that these factors also should be considered in selecting a particular foreign custodian.[44]

ii. Financial Strength and Reputation

The amended rule requires the Foreign Custody Manager to consider whether the foreign custodian has the requisite financial strength to provide reasonable care for fund assets.[45] Particular emphasis should be placed on evaluating the custodian's financial strength, since the amended rule no longer requires the foreign custodian to have a specified minimum shareholders' equity.[46] As noted in the Proposing Release, in considering financial strength, the Foreign Custody Manager should assess the adequacy of the custodian's capital with a view of protecting the fund against the risk of loss from a custodian's insolvency.[47]

In addition, consideration must be given to the custodian's reputation and standing generally. The amended rule does not limit the Foreign Custody Manager to considering the foreign custodian's reputation in the country where the custodian is located. This approach seeks to provide greater flexibility to evaluate a custodian's reputation based on the facts and circumstances relevant to the particular custodian (such as the custodial services it provides in other jurisdictions).[48]

iii. Jurisdiction

The amended rule also requires the Foreign Custody Manager to assess the likelihood of U.S. jurisdiction over and enforcement of judgments against a foreign custodian.[49] This provision is designed to allow the Foreign Custody Manager to consider various factors, including whether a foreign custodian has branch offices in the United States. The Foreign Custody Manager should evaluate other jurisdictional and enforcement means such as whether the foreign custodian has appointed an agent for service of process in the United States or has consented to jurisdiction in this country. The Commission recognizes that U.S. jurisdiction may not be obtainable over certain foreign depositories and other custodians, and an affirmative finding of U.S. jurisdiction would not be required. Rather, the existence or absence of U.S. jurisdiction would have to be considered in making the overall

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[37] *See* Proposing Release, *supra* note 5, at n.80 and accompanying text.

[38] Amended rule 17f–5(c)(1) (17 CFR 270 17f–5(c)(1)).

[39] *Id.* As noted in the Proposing Release, *supra* note 5, at nn.88–89 and accompanying text, while reference to U.S. standards may be relevant in determining whether the fund's assets will be maintained with reasonable care, the rule does not require parity between foreign and U.S. custodial arrangements.

[40] Amended rule 17f–5(c)(1) (i) through (iv) (17 CFR 270.17f–5(c)(1) (i) through (iv)).

[41] Amended rule 17f–5(c)(1)(i) (17 CFR 270.17f–5(c)(1)(i)).

[42] *See* Proposing Release, *supra* note 5, at nn.88–89 and accompanying text. For example, if delivery vs. payment procedures are not part of the settlement practices of a particular foreign market, some custodians in that market might provide safeguards that address the lack of such procedures, while others might not. *See, e.g.,* Department of the Treasury, Office of Comptroller of the Currency, *Emerging Market Country Products and Trading Activities* 20 (Dec. 1995) (discussing alternatives to delivery vs. payment procedures). Such differences among custodians should be considered in determining whether a particular custodian will provide reasonable care for fund assets. *See supra* note 17 (discussing the delivery vs. payment procedures).

[43] *See* Proposing Release, *supra* note 5, at n.54 and accompanying text.

[44] *See* Letter from Chase Manhattan Bank to Jonathan G. Katz, Secretary, Securities and Exchange Commission (Oct. 6, 1995), File No. S7–23–95, at n.4 (noting that the use of vaults and computers, for example, is important with respect to any particular foreign custodian).

[45] Amended rule 17f–5(c)(1)(ii) (17 CFR 270.17f–5(c)(1)(ii)).

[46] *See infra,* Section III.D.1 of this Release.

[47] *See* Proposing Release, *supra* note , at nn.125–131 and accompanying text.

[48] Amended rule 17f–5(c)(1)(iii) (17 CFR 270.17f–5(c)(1)(iii)). The amended rule no longer addresses a custodian's efficiency and relative costs.

[49] Amended rule 17f–5(c)(1)(iv) (17 CFR 270.17f–5(c)(1)((iv)).

determination that the custodian will provide reasonable care for fund assets.

2. Foreign Custody Contract

Rule 17f–5 currently requires a fund's foreign custody arrangements to be governed by a written contract that the fund's board determines is in the best interests of the fund and which contains specified provisions.[50] The proposed amendments would have eliminated the requirement that specific provisions be included in the contract but would have required the Foreign Custody Manager to determine that the contract would provide reasonable protection for fund assets. Although a small number of commenters supported the proposed approach, commenters generally favored retaining the contract requirements in the rule as benefitting funds and their shareholders. The commenters asserted, among other things, that the rule's requirements have resulted in international standards for foreign custody agreements that have served to protect investors.

In light of these comments, the Commission has concluded that the amended rule should continue to require foreign custody arrangements to be governed by a written contract. Consistent with the new standard for evaluating foreign custody arrangements, the amended rule requires that the Foreign Custody Manager determine that the contract will provide reasonable care for fund assets.[51] The amended rule also retains the specific contract requirements.[52] In addition, the amended rule permits the contract to contain alternative provisions in lieu of those specified in the rule. The Foreign Custody Manager must determine that the alternative provisions, in their entirety, will provide the same or a greater level of care and protection for fund assets as the specified provisions, in their entirety.[53] This change should provide funds and their custodians with the flexibility to take advantage of innovations that are consistent with investor protection. Finally, as discussed below, the specified contract requirements have been modified to reflect commenters' suggestions and staff interpretive positions.

a. Indemnification and Insurance

Rule 17f–5 currently requires the foreign custody contract to provide that the fund will be adequately indemnified *and* its assets adequately insured in the event of loss.[54] This provision has been interpreted as permitting the contract to provide for indemnification (but not insurance) if the indemnification arrangements would adequately protect the fund.[55] In response to the commenters' suggestions, the Commission has clarified the provision in rule 17f–5 to reflect this interpretation.[56] The amended rule specifies that the contract must provide for indemnification or insurance arrangements (or any combination of the foregoing) such that the fund will be adequately protected against the risk of loss of assets held in accordance with the contract.[57]

b. Liens

Rule 17f–5 currently requires the foreign custody contract to provide that the fund's assets will not be subject to any right, charge, security interest, lien or claim of any kind in favor of the foreign custodian or its creditors except a claim of payment for the safe custody or administration of the fund's assets.[58] Commenters suggested that in many jurisdictions, cash deposits may become subject to creditors' claims if a custodian becomes bankrupt. The rule as amended addresses this issue by providing that the prohibition against liens does not apply to cash deposits that may become subject to creditors' claims or rights arising under bankruptcy, insolvency, or other similar laws.[59] If a fund places assets with a custodian in a jurisdiction in which the deposits can become subject to a lien, the Foreign Custody Manager should take this factor into account in determining whether the foreign custodian has the requisite financial strength to provide reasonable care for fund assets, and in establishing monitoring procedures with respect to the custodial arrangement.[60] The Foreign Custody Manager, for example, should consider adopting procedures for assuring that the amount maintained in deposit accounts that could be subject to liens is kept to a minimum or explore reasonable alternatives to cash deposits.

c. Omnibus Accounts

In an ''omnibus account'' structure, the assets of more than one custodial customer are contained in an account that has been established, typically by and in the name of an intermediary custodian, with a foreign bank or securities depository. Rule 17f–5 currently requires the foreign custody contract to provide that adequate records will be maintained identifying the assets in foreign custody as belonging to the fund.[61] Although the Commission staff has taken the position that the current rule does not prescribe a specific manner for keeping custodial records, and therefore does not prohibit omnibus accounts,[62] several commenters recommended amending the rule to specifically recognize the permissibility of omnibus accounts.

The amended rule provides that the custodian's records may either identify the assets as belonging to the fund or as being held by a third party for the benefit of the fund.[63] The amended rule therefore recognizes that in an omnibus account structure, the securities depository's books may show that the custodian is the owner of the fund's assets. The amended rule makes clear, however, that the fund's interest in the account should be reflected on the books of the custodian.[64]

d. Depository Arrangements

The Commission understands that foreign depository arrangements typically are governed not by contract, but pursuant to rules or practices of the depository.[65] To accommodate the use

[50] Rule 17f–5(a)(1)(iii). The contract generally must provide that: (A) The fund will be indemnified and its assets insured in the event of loss; (B) the fund's assets will not be subject to liens or other claims in favor of the foreign custodian or its creditors; (C) the fund's assets will be freely transferable without the payment of money; (D) records will be kept identifying the fund's assets as belonging to the fund; (E) the fund's independent public accountants will be given access to those records or confirmation of the contents of those records; and (F) the fund will receive periodic reports, including notification of any transfers to or from the fund's account. Rule 17f–5(a)(1)(iii)(A) through (F).

[51] Reasonable care, in this context, would be determined by reference to the same standards used in selecting the foreign custodian.

[52] Amended rule 17f–5(c)(2)(i) (17 CFR 270.17f–5(c)(2)(i)).

[53] Amended rule 17f–5(c)(2)(ii) (17 CFR 270.17f–5(c)(2)(ii)).

[54] Rule 17f–5(a)(1)(iii)(A).

[55] *See* Investment Company Institute (Nov. 4, 1987).

[56] Amended rule 17f–5(c)(2)(i)(A) (17 CFR 270.17f–5(c)(2)(i)(A)).

[57] *See* Investment Company Institute, *supra* note 55.

[58] Rule 17f–5(a)(1)(iii)(B).

[59] Amended rule 17f–5(c)(2)(i)(B) (17 CFR 270.17f–5(c)(2)(i)(B)).

[60] *See infra* Section III.C.3 of this Release.

[61] Rule 17f–5(a)(1)(iii)(D).

[62] *See* State Street Bank & Trust Company (Feb. 28, 1995).

[63] Amended rule 17f–5(c)(2)(i)(D) (17 CFR 270.17f–5(c)(2)(i)(D)).

[64] *Id.* A conforming change has been made to paragraph (c)(2)(i)(F) of the rule, which requires that the fund receive notice of any transfers of fund assets to or from the custodian. This notice provision requires notice of transfers to or from third party accounts. Amended rule 17f–5(c)(2)(i)(F) (17 CFR 270.17f–5(c)(2)(i)(F)).

[65] Typically, the contractual arrangement pursuant to which fund assets are held in a foreign depository involves an eligible foreign bank that is itself a subcustodian of the fund's U.S. custodian. Rule 17f–5 currently does not require the foreign depository to be party to the fund's foreign custody

Continued

of these depositories, the Commission is amending rule 17f–5 to clarify that the provisions required to be in the custody contract may be reflected in the rules or established practices or procedures of the depository, or in any combination of the foregoing.[66]

3. Monitoring Custody Arrangements and Withdrawing Fund Assets

Rule 17f–5 currently contains detailed provisions concerning board oversight and monitoring of foreign custodial arrangements.[67] The amended rule replaces these provisions with a requirement that the Foreign Custody Manager establish a system to monitor the appropriateness of maintaining the fund's assets with a particular custodian and the fund's foreign custody contract.[68] Commenters supported these amendments.

If a foreign custody arrangement no longer meets the requirements of the amended rule, the fund must withdraw its assets from the custodian as soon as reasonably practicable.[69] Rule 17f–5's monitoring requirement is intended to result in the Foreign Custody Manager receiving sufficient and timely information to permit it to respond to material changes in the fund's foreign custody arrangement. The amended rule focuses on the importance of taking prompt action based on the circumstances presented. For example, a fund that places substantially all of its assets with one custodian in a single country may require more time to withdraw those assets than a fund that has placed only a small percentage of its assets with a particular custodian in a particular country.

D. Eligible Foreign Custodians

1. Foreign Banks and Trust Companies

Rule 17f–5 currently limits the class of ''eligible foreign custodians'' to foreign banks and trust companies that have more than $200 million in shareholders' equity and U.S. bank subsidiaries that have more than $100 million in shareholders' equity.[70] The Commission proposed eliminating these requirements in favor of a more flexible standard that allows the Foreign Custody Manager to take into account all factors that affect the foreign custodian's financial strength and its ability to provide custodial services, including credit and market risks.[71] Commenters strongly supported these amendments.

Under the amended rule, any foreign bank or trust company that is subject to foreign bank or trust company regulation, as well as any U.S. bank subsidiary, may be an eligible foreign custodian.[72] As discussed above, a custodian's financial strength is an important factor to be considered in selecting a foreign custodian. The amended rule requires the Foreign Custody Manager to evaluate the financial strength of a foreign custodian in determining whether the fund's assets will be subject to reasonable care if maintained with that custodian.[73]

2. Affiliated Foreign Custodians

Rule 17f–5 currently does not address affiliated foreign custody arrangements. Under the proposed amendments, eligible foreign banks and trust companies would have been prohibited from being affiliated persons of the fund or affiliated persons of such persons. The Commission proposed this approach because rule 17f–2 under the Investment Company Act, the rule that governs funds' self-custody arrangements and has been interpreted by the Commission staff to apply to affiliated custody arrangements, appeared to be unworkable in the foreign custody context.[74]

Commenters generally disagreed with the proposed prohibition, arguing that it would be particularly troublesome in certain markets where there is a limited number of eligible custodians. In response to these comments, and upon further consideration of the issue, the Commission is not including the proposed prohibition on foreign affiliated custody arrangements in rule 17f–5 as amended. The Commission will consider the issues raised by foreign affiliated custody arrangements when it considers comprehensive amendments to rule 17f–2.

The Commission understands, however, that a number of market participants currently use arrangements involving an unaffiliated primary custodian of the fund and a foreign sub-custodian that is affiliated with the fund.[75] The Commission is of the view that such an arrangement, provided it is structured with appropriate oversight and controls by the unaffiliated intermediary (*i.e.*, the primary custodian), may adequately address the concerns of self-custody. The risks of misappropriation of fund assets are mitigated when the custody arrangement is entered into by, and operated through, an unaffiliated intermediary custodian and is subject to adequate independent scrutiny.

The Commission believes that this generally would be the case when the fund's assets are held by the foreign sub-custodian in an omnibus account in the name of the primary custodian, so as to preclude specific identification of fund assets by the affiliated sub-custodian. In addition, adequate involvement by an unaffiliated custodian would require that the sub-custodian be permitted to settle transactions involving fund assets solely on receipt of instructions from the primary custodian (which, in turn, receives its instructions from the fund).[76] The primary custodian also should closely monitor the fund's account to assure that unauthorized transactions have not occurred, and the fund's auditors should review and test the monitoring and control safeguards for fund assets.

3. Securities Depositories

Rule 17f–5 currently includes among eligible foreign custodians a foreign securities depository or clearing agency that operates the only system for the central handling of securities or equivalent book-entries in a country (the ''only system requirement'').[77] The only system requirement was designed to ensure a country's interest in establishing and maintaining a depository's integrity. Because the requirement has been unnecessarily restrictive, the Commission proposed to eliminate it.[78] Commenters uniformly supported the proposed change.

The amended rule requires a securities depository or clearing agency that acts as a system for the central

contract. *See* Proposing Release, *supra* note 5, at nn. 98–100 and accompanying text.

[66] Amended rule 17f–5(c)(2) (17 CFR 270.17f–5(c)(2)).

[67] Rule 17f–5(a) (2) through (4).

[68] Amended rule 17f–5(c)(3)(i) (17 CFR 270.17f–5(c)(3)(i)).

[69] Amended rule 17f–5(c)(3)(ii) (17 CFR 270.17f–5(c)(3)(ii)). Current rule 17f–5(a)(4) requires fund assets to be withdrawn within 180 days under these circumstances.

[70] Rule 17f–5(c)(2)(i), (ii).

[71] *See* Proposing Release, *supra* note 5, at nn.124–126 and accompanying text.

[72] Amended rule 17f–5(a)(1) (17 CFR 270.17f–5(a)(1)).

[73] *See supra* Section III.C.1.b.ii of this Release.

[74] *See* Proposing Release, *supra* note 5, at n.138; Pegasus Income and Capital Fund, Inc. (Dec. 31, 1977) (to guard against potential abuses resulting from control over fund assets by related persons, rule 17f–2 (17 CFR 270.17f–2) has been applied to affiliated custody arrangements). Rule 17f–2 requires, among other things, that fund assets be maintained in a bank that is subject to state or federal regulation; the fund's assets also must be subject to Commission inspection and verified by an independent public accountant. Rule 17f–2(b), (d), (e) (17 CFR 270.17f–2(b), (d), (e)).

[75] *See supra* note 18 and accompanying text (discussing primary custodians).

[76] The affiliated sub-custodian should not share personnel with other affiliates of the fund (*e.g.*, the fund's investment adviser) to assure the integrity of the safeguards for fund assets.

[77] Rule 17f–5(c)(2)(iii).

[78] *See* Proposing Release, *supra* note 5, at nn.155–156 and accompanying text.

handling of securities or equivalent book-entries to be regulated by a foreign financial regulatory authority.[79] The Commission believes that foreign regulation of a depository demonstrates a country's interest in the depository's safety, thus achieving the Commission's objective.

E. Assets Maintained in Foreign Custody

Rule 17f–5 currently permits a fund to use foreign custody arrangements for its foreign securities, cash, and cash equivalents.[80] Rule 17f–5 defines foreign securities to include those that are issued and sold primarily outside the United States by foreign and U.S. issuers.[81] By restricting the types of securities that may be maintained outside the United States, the rule seeks to establish a nexus between its scope and its purpose (*i.e.*, to give funds the flexibility to keep abroad assets that are purchased or intended to be sold abroad). In addition, rule 17f–5 currently limits the cash and cash equivalents that a fund may maintain outside the United States to amounts that are reasonably necessary to effect the fund's foreign securities transactions.[82]

The Proposing Release requested comment whether the rule should continue to restrict the types of securities and amounts of cash and cash equivalents that a fund may maintain outside the United States. One commenter suggested that this provision may not permit a fund to maintain investments in other assets, such as foreign currencies, for which the primary market is outside of the United States. To better reflect these types of investment practices, the amended rule permits a fund to maintain in foreign custody any investment (including foreign currencies) for which the primary market is outside the United States.[83]

F. Canadian Funds

Rule 17f–5 currently contains special provisions governing the foreign custody arrangements of Canadian funds registered in the United States.[84] To address jurisdictional concerns underlying section 7(d) of the Act, these provisions are more restrictive than those applied to U.S. funds and allow Canadian funds to maintain their assets only in overseas branches of U.S. banks.[85] Because Canadian funds have not sought to register under the Act for some time, and very few Canadian funds currently offer their shares in the United States, the proposed amendments would have made limited conforming changes in the foreign custody requirements applicable to Canadian funds.

The Commission received one comment letter addressing Canadian funds. The commenter suggested that Canadian funds be permitted to use foreign custody arrangements on the same basis as their U.S. counterparts. The amended rule generally reflects this approach. As under the current rule, however, a Canadian fund's assets must be kept in the custody of an overseas branch of a U.S. bank. In addition, if the Canadian fund's board delegates its responsibilities under the rule, the only permissible delegates are the fund's officers, investment adviser or a U.S. bank.[86]

IV. Effective Date; Compliance Dates

The amendments to rule 17f–5 become effective thirty days after publication in the **Federal Register**. Funds that wish to rely on the amended rule prior to the effective date of the amendments may do so. Funds that have established foreign custody arrangements in accordance with rule 17f–5 prior to the effective date of these amendments (''existing foreign custody arrangements'') must bring these arrangements into compliance with the amended rule (*i.e.*, have the fund's board make the findings required by the amended rule or appoint a delegate to do so) within one year of the effective date of these amendments. The one year period is designed to give funds the flexibility to bring an existing foreign custody arrangement into compliance with the amended rule either when that arrangement would have been subject to the fund board's annual review, as was required by the rule before these amendments, or at any board meeting within the one year period.

V. Cost/Benefit Analysis and Effects on Competition, Efficiency and Capital Formation

The amendments to rule 17f–5 seek to give funds greater flexibility in their foreign custody arrangements consistent with investor protection. The amended rule permits a fund's board to delegate its responsibilities to select and monitor a fund's foreign custody arrangements and no longer requires the board to approve these arrangements annually. The amended rule does require delegates to provide fund boards with written reports regarding certain aspects of the foreign custody arrangements. This requirement is designed to facilitate board oversight and protect fund shareholders. The potential costs associated with this requirement are not expected to be significant, and are likely to be much less than the costs associated with the current requirement of providing fund boards with information pertaining to their annual review of foreign custody arrangements.

The amendments also expand the class of foreign banks and securities depositories that may serve as custodians of fund assets overseas. These amendments give funds greater flexibility in selecting foreign custodians and eliminate the need for funds to request administrative relief for certain foreign custody arrangements.

Section 2(c) of the Investment Company Act provides that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission must consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[87] The Commission has considered the amendments to rule 17f–5 in light of these standards. The Commission believes that the amendments are consistent with the public interest and will promote efficiency and competition because the amendments (i) permit fund directors to

[79] Amended rule 17f–5(a)(1)(ii) (17 CFR 270.17f–5(a)(1)(ii)). Rule 17f–5 currently also includes among eligible foreign custodians a security depository or clearing agency, incorporated or organized under the laws of a country other than the United States, that ''operates'' a transnational system for the central handling of securities or equivalent book-entries. The amended rule refers to securities depositories or clearing agencies that ''act as'' such transnational systems. Amended rule 17f–5(a)(1)(iii) (17 CFR 270.17f–5(a)(1)(iii). This change is intended to recognize that in some instances the service provider that operates or administers the transnational system may be organized under the laws of the United States (*e.g.*, as a foreign branch of a U.S. bank).

[80] Rule 17f–5(a).

[81] Rule 17f–5(c)(1).

[82] Rule 17f–5(a).

[83] Amended rule 17f–5(c) (17 CFR 270.17f–5(c)). As a result of this change, the rule no longer refers to ''foreign securities'' (which had been defined as securities ''issued and sold primarily outside of the United States''). The ''primary market'' formulation is designed to encompass foreign securities as well as other types of investments.

[84] Rule 174f–5(b)

[85] Section 7(d) of the Investment Company Act (15 U.S.C. 80a–7(d)) prohibits foreign investment companies from publicly offering their securities in the United States unless the Commission issues an order permitting registration under the Act. Rule 7d–1 under the Investment Company Act (17 CFR 270.7d–1) sets forth conditions governing applications by Canadian funds that seek Commission orders pursuant to section 7(d). Among other conditions, rule 7d–1 provides that the assets of Canadian funds are to be held in the United States by a U.S. bank, except as provided under rule 17f–5. Rule 7d–1(b)(8)(v) (17 CFR 270.7d–1(b)(8)(v)).

[86] Amended rule 17f–5(d) (1), (2) (17 CFR 270.17f–5(d) (1), (2)).

[87] 15 U.S.C. 80a–-2(c).

play a more traditional oversight role with respect to the custody of fund assets overseas, (ii) better focus the scope of the rule on safekeeping considerations, and (iii) expand the class of eligible foreign banks and securities depositories that may serve as custodians of fund assets. The Commission also believes that the amendments will have no adverse effect on capital formation.

VI. Summary of Final Regulatory Flexibility Analysis

A summary of the Initial Regulatory Flexibility Analysis, which was prepared in accordance with 5 U.S.C. 603, was published in Investment Company Act Release No. 21259. No comments were received on that Analysis. The Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA'') in accordance with 5 U.S.C. 604. The FRFA states that the objective of the amendments is to give funds greater flexibility in their foreign custody arrangements by permitting fund boards to delegate their responsibilities to select and monitor foreign custodians, and by expanding the class of eligible foreign custodians. The FRFA provides that approximately 194 funds and 242 investment advisers that are small entities may be effected by the amendments. The FRFA explains that the amendments seek to reduce burdens on all funds, including those that are small entities, and that the amended rule's compliance requirements are necessary for the safekeeping of fund assets and investor protection. Finally, the FRFA states that in adopting the amendments the Commission considered (a) the establishment of differing compliance requirements that take into account the resources available to small entities; (b) simplification of the rule's requirements for small entities; (c) the use of performance rather than design standards; and (d) an exemption from the rule for small entities. The FRFA states that the Commission concluded that different requirements for small entities are not necessary and would be inconsistent with investor protection, and that the amended rule incorporates performance standards to the extent practicable. Cost-benefit information reflected in the ''Cost/Benefit Analysis'' section of this Release also is reflected in the FRFA. A copy of the FRFA may be obtained by contacting Robin S. Gross, Mail Stop 10–2, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549.

VII. Paperwork Reduction Act

The amendments to rule 17f–5, among other things (i) permit a fund's board of directors to delegate its responsibilities under the rule upon a finding that it is reasonable to rely on the delegate to perform the delegated responsibilities, and (ii) require the delegate to notify the board of the placement of the fund's assets with a particular foreign custodian and of any material change in the fund's foreign custody arrangements. These provisions constitute a ''collection of information'' requirement within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), because making the finding and providing the notices are necessary to be able to rely on the amended rule for foreign custody arrangements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Accordingly, the Commission submitted the proposed amendments to the Office of Management and Budget (''OMB'') pursuant to 44 U.S.C. 3507 and received approval of the amendments'' ''collection of information'' requirements (OMB control number 3235–0269). As discussed in section III.A. of this Release, the Commission has determined not to adopt the proposed amendment requiring a fund's board to make a finding that placing fund assets in a particular country would provide reasonable protection for fund assets. The Commission believes that this is not a material change for purposes of collection of information requirements and will not have any impact on the Commission's estimate of total burden hours. The amended rule does not require that the collection of information be made public or kept confidential by the parties; to the extent that the Commission obtains access to the collection of information through its inspection program, the information generally would not be available to third parties.

VIII. Statutory Authority

The Commission is amending rule 17f–5 pursuant to the authority set forth in sections 6(c) and 38(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–6(c), 80a–37(a)).

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rule

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

* * * * *

2. Section 270.17f–5 is revised to read as follows:

§ 270.17f–5. Custody of investment company assets outside the United States.

(a) *Definitions.* For purposes of this section:

(1) *Eligible Foreign Custodian* means an entity that is incorporated or organized under the laws of a country other than the United States and that is:

(i) A Qualified Foreign Bank or a majority-owned direct or indirect subsidiary of a U.S. Bank or bank-holding company;

(ii) A securities depository or clearing agency that acts as a system for the central handling of securities or equivalent book-entries in the country that is regulated by a foreign financial regulatory authority as defined under section 2(a)(50) of the Act (15 U.S.C. 80a–2(a)(50)); or

(iii) A securities depository or clearing agency that acts as a transnational system for the central handling of securities or equivalent book-entries.

(2) *Foreign Custody Manager* means a Fund's or a Registered Canadian Fund's board of directors or any person serving as the board's delegate under paragraphs (b) or (d) of this section.

(3) *Fund* means a management investment company registered under the Act (15 U.S.C. 80a) and incorporated or organized under the laws of the United States or of a state.

(4) *Qualified Foreign Bank* means a banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated as such by the country's government or an agency of the country's government.

(5) *Registered Canadian Fund* means a management investment company incorporated or organized under the laws of Canada and registered under the Act pursuant to the conditions of § 270.7d–1.

(6) *Securities Depository* means a system for the central handling of securities as defined in § 270.17f–4(a).

(7) *U.S. Bank* means an entity that is:

(i) A banking institution organized under the laws of the United States;

(ii) A member bank of the Federal Reserve System;

(iii) Any other banking institution or trust company organized under the laws of any state or of the United States, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this section, or

(iv) A receiver, conservator, or other liquidating agent of any institution or firm included in paragraphs (a)(7)(i), (ii), or (iii) of this section.

(b) *Delegation.* A Fund's board of directors may delegate to the Fund's investment adviser or officers or to a U.S. Bank or to a Qualified Foreign Bank the responsibilities set forth in paragraphs (c)(1), (c)(2), or (c)(3) of this section, *provided that:*

(1) The board determines that it is reasonable to rely on the delegate to perform the delegated responsibilities;

(2) The board requires the delegate to provide written reports notifying the board of the placement of the Fund's assets with a particular custodian and of any material change in the Fund's arrangements, with the reports to be provided to the board at such times as the board deems reasonable and appropriate based on the circumstances of the Fund's foreign custody arrangements; and

(3) The delegate agrees to exercise reasonable care, prudence and diligence such as a person having responsibility for the safekeeping of Fund assets would exercise, or to adhere to a higher standard of care, in performing the delegated responsibilities.

(c) *Selecting an Eligible Foreign Custodian.* A Fund may place and maintain in the care of an Eligible Foreign Custodian any investments (including foreign currencies) for which the primary market is outside the United States, and such cash and cash equivalents as are reasonably necessary to effect the Fund's transactions in such investments, *provided that:*

(1) The Foreign Custody Manager determines that the Fund's assets will be subject to reasonable care, based on the standards applicable to custodians in the relevant market, if maintained with the custodian, after considering all factors relevant to the safekeeping of such assets, including, without limitation:

(i) The custodian's practices, procedures, and internal controls, including, but not limited to, the physical protections available for certificated securities (if applicable), the method of keeping custodial records, and the security and data protection practices;

(ii) Whether the custodian has the requisite financial strength to provide reasonable care for Fund assets;

(iii) The custodian's general reputation and standing and, in the case of a Securities Depository, the depository's operating history and number of participants; and

(iv) Whether the Fund will have jurisdiction over and be able to enforce judgments against the custodian, such as by virtue of the existence of any offices of the custodian in the United States or the custodian's consent to service of process in the United States.

(2) Contract. The Fund's foreign custody arrangements must be governed by a written contract (or, in the case of a Securities Depository, by such a contract, by the rules or established practices or procedures of the depository, or by any combination of the foregoing) that the Foreign Custody Manager has determined will provide reasonable care for Fund assets based on the standards specified in paragraph (c)(1) of this section.

(i) Such contract shall include provisions that provide:

(A) For indemnification or insurance arrangements (or any combination of the foregoing) such that the Fund will be adequately protected against the risk of loss of assets held in accordance with such contract;

(B) That the Fund's assets will not be subject to any right, charge, security interest, lien or claim of any kind in favor of the custodian or its creditors except a claim of payment for their safe custody or administration or, in the case of cash deposits, liens or rights in favor of creditors of the custodian arising under bankruptcy, insolvency, or similar laws;

(C) That beneficial ownership for the Fund's assets will be freely transferable without the payment of money or value other than for safe custody or administration;

(D) That adequate records will be maintained identifying the assets as belonging to the Fund or as being held by a third party for the benefit of the Fund;

(E) That the Fund's independent public accountants will be given access to those records or confirmation of the contents of those records; and

(F) That the Fund will receive periodic reports with respect to the safekeeping of the Fund's assets, including, but not limited to, notification of any transfer to or from the Fund's account or a third party account containing assets held for the benefit of the Fund.

(ii) Such contract may contain, in lieu of any or all of the provisions specified in paragraph (c)(2)(i) of this section, such other provisions that the Foreign Custody Manager determines will provide, in their entirety, the same or a greater level of care and protection for Fund assets as the specified provisions, in their entirety.

(3)(i) Monitoring the Foreign Custody Arrangements. The Foreign Custody Manager must have established a system to monitor the appropriateness of maintaining the Fund's assets with a particular custodian under paragraph (c)(1) of this section, and the contract governing the Fund's arrangements under paragraph (c)(2) of this section.

(ii) If an arrangement no longer meets the requirements of this section, the Fund must withdraw its assets from the custodian as soon as reasonably practicable.

(d) *Registered Canadian Funds.* Any Registered Canadian Fund may place and maintain outside the United States any investments (including foreign currencies) for which the primary market is outside the United States, and such cash and cash equivalents as are reasonably necessary to effect the Fund's transactions in such investments, in accordance with the requirements of this section, *provided that:*

(1) The assets are placed in the care of an overseas branch of a U.S. Bank that has aggregate capital, surplus, and undivided profits of a specified amount, which must not be less than $500,000; and

(2) The Foreign Custody Manager is the Fund's board of directors, its investment adviser or officers, or a U.S. Bank.

May 12, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12881 Filed 5–15–97; 8:45 am]

BILLING CODE 8010–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

Increased Fine for Notice Posting Violations

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: In accordance with Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, this final rule adjusts for inflation the civil money penalty for violation of notice posting requirements.

EFFECTIVE DATE: This rule is effective on June 16, 1997.

FOR FURTHER INFORMATION CONTACT: Willie King, Director, Financial Management Division (202) 663–4224.

SUPPLEMENTARY INFORMATION:

I. The Debt Collection Improvement Act of 1996

In an effort to maintain the remedial impact of civil money penalties (CMPs) and promote compliance with the law, the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (Pub. L. 101–410) was amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) to require Federal agencies to regularly adjust certain CMPs for inflation. As amended, the law requires each agency to make an initial inflationary adjustment for all applicable CMPs, and to make further adjustments at least once every four years thereafter for these penalty amounts.

The Debt Collection Improvement Act of 1996 further stipulates that any resulting increases in a CMP due to the calculated inflation adjustments (i) Should apply only to the violations that occur after October 23, 1996 (the Act's effective date) and (ii) should not exceed 10 percent of the penalty indicated.

Method of Calculation

Under the Act, the inflation adjustment is determined by increasing the maximum CMP amount per violation by the cost-of-living adjustment. The ''cost-of-living'' adjustment is defined as the percentage for each CMP by which the Consumer Price Index (CPI) for June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of such CMP was last set or adjusted pursuant to the law. Any calculated increase under this adjustment is subject to a specific rounding formula set forth in the Act and a ten percent limitation.

II. EEOC Civil Money Penalties Effected by This Adjustment

Under 42 U.S.C. § 2000e–10(a) and 29 CFR § 1601.30(a), every employer, employment agency, labor organization, and joint labor-management committee controlling an apprenticeship or other training program that has an obligation under Title VII or the ADA must post notices describing the applicable provisions of Title VII and the ADA. Such notices must be posted in prominent and accessible places where notices to employees, applicants and members are customarily maintained.

Currently, 42 U.S.C. 2000e–10(b) and 29 CFR 1601.30(b) make failure to comply with the notice posting requirements punishable by a fine of not more than $100 for each separate offense. Based on the inflation calculation described in Section I of this notice, we are adjusting the maximum penalty per violation to $110.

III. Waiver of Proposed Rulemaking

In developing this final rule, we are waiving the usual notice of proposed rulemaking and public comment procedures set forth in the Administrative Procedure Act (APA) (5 U.S.C. 553). The APA provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(3)(B) good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically, this rulemaking is required by the Debt Collection Improvement Act of 1996, and the Commission has no discretion in determining the amount of the published adjustment. Accordingly, we are issuing these revised regulations as a final rule.

IV. Regulatory Impact Statement

Executive Order 12866

This final rule is exempt from Office of Management and Budget (OMB) review under Executive Order 12866 because it is limited to the adoption of statutory language, without interpretation. As indicated above, the provisions contained in this final rulemaking set forth an inflation adjustment required by the Debt Collection Improvement Act of 1996. Moreover, it has been determined that this final rule is not significant. The great majority of employers and entities covered by these regulations comply with the posting requirement, and a result, we believe that any aggregate economic impact of these revised regulations will be minimal, affecting only those limited few who fail to post required notices in violation of the regulation and statute.

Regulatory Flexibility Act

A regulatory flexibility analysis is only required by the Regulatory Flexibility Act (5 U.S.C. 601–612), when notice and comment is required by the Administrative Procedure Act or some other statute. As stated above, notice and comment is not required for this rule. For that reason, the requirements of the Regulatory Flexibility Act do not apply.

Paperwork Reduction Act

This final rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure.

For the Commission.

Gilbert F. Casellas,

Chairman.

For the reasons set forth in the preamble, 29 CFR part 1601 is revised as follows:

PART 1601—PROCEDURAL REGULATIONS

1. The authority citation for part 1601 continues to read as follows:

Authority: 42 U.S.C. 2000e to 2000e–17; 42 U.S.C. 1111 to 12117.

2. Section 1601.30 is amended by revising paragraph (b) to read as follows:

§ 1601.30 Notices to be posted.

* * * * *

(b) Section 711(b) of Title VII makes failure to comply with this section punishable by a fine of not more than $110 for each separate offense.

[FR Doc. 97–12769 Filed 5–15–97; 8:45 am]

BILLING CODE 6570–06–M

DEPARTMENT OF THE TREASURY

Departmental Offices

31 CFR Part 1

Privacy Act of 1974; Implementation

AGENCY: Departmental Offices, Treasury.

ACTION: Final Rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury issues a final rule to add the exemption claimed for the Pacific Basin Reporting Network—Treasury/Customs .171.

EFFECTIVE DATE: May 16, 1997.

FOR FURTHER INFORMATION CONTACT: Dale Underwood, Disclosure Services, Department of the Treasury, Washington, DC 20220. (202) 622–0930.

SUPPLEMENTARY INFORMATION: The Privacy Act system of records notice establishing the Pacific Basin Reporting Network—Treasury/Customs .171, was published at 57 FR 54633 on November 19, 1992. A determination setting out the findings by the Commissioner of the U.S. Customs was published as a proposed rule on November 19, 1992, at 57 FR 54539. The proposed rule requested comments be submitted by December 21, 1992; however none were received. Accordingly, a final determination was published in the **Federal Register** by the Department on behalf of the Customs Service on November 29, 1996, at 61 FR 60559.

This final rule is to conform the Department's regulations found at 31 CFR 1.36 with the proposed and final determination published by the Department on behalf of the Customs Service. The rule amends 31 CFR 1.36 to add the exemptions claimed for the Pacific Basin Reporting Network—Treasury/Customs .171 to the Department's regulations.

In accordance with 5 U.S.C. 552a (j) and (k) and § 1.23(c), the Department of the Treasury exempts the Pacific Basin Reporting Network system of records from certain provisions of the Privacy Act for the reasons indicated:

a. *General exemptions under 5 U.S.C. 552a(j)(2).* Pursuant to the provisions of 5 U.S.C. 552a(j)(2), the Department of the Treasury (Department), hereby exempts the Basin Reporting Network system of records, maintained by the United States Customs Service, from the provisions of 5 U.S.C. 552a(c)(3) and (4), (d)(1)(2)(3) and (4), (e)(1), (2), (3), (4)(G), (H) and (I), (5) and (8), (f) and (g).

1. *Exempt system.* The Pacific Basin Reporting Network—Treasury/Customs .171(PBRN), contains information of the type described in 5 U.S.C. 552a(j)(2), and shall be exempt from the provisions of 5 U.S.C. 552a listed in paragraph a. above except as otherwise indicated below.

2. *Reasons for exemptions.* (a) 5 U.S.C. 552a (e)(4)(G) and (f)(1) enable individuals to be notified whether a system of records contains records pertaining to them. The Department believes that application of these provisions to the PBRN system of records would give individuals an opportunity to learn whether they are of record either as suspects or as subjects of a criminal investigation. This would compromise the ability of the Department to complete investigations and to detect and apprehend violators of customs and related laws in that individuals would thus be able to:

(1) Take steps to avoid detection;

(2) Inform co-conspirators of the fact that an investigation is being conducted;

(3) Learn the nature of the investigation to which they are being subjected;

(4) Learn the type of surveillance being utilized;

(5) Learn whether they are only suspects or identified law violators;

(6) Continue or resume their illegal conduct without fear of detection upon learning that they are not in a particular system of records; and

(7) Destroy evidence needed to prove the violation.

(b) 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5) enable individuals to gain access to records pertaining to them. The Department believes that application of these provisions to the PBRN system of records would compromise its ability to complete or continue criminal investigations and to detect and apprehend violators of customs and related criminal laws. Permitting access to records contained in the PBRN system of records would provide individuals with significant information concerning the nature of the investigation, and this could enable them to avoid detection or apprehension in the following ways:

(1) By discovering the collection of facts which would form the basis for their arrest;

(2) By enabling them to destroy contraband or other evidence of criminal conduct which would form the basis for their arrest; and

(3) By learning that the criminal investigators had reason to believe that a crime was about to be committed, they could delay the commission of the crime or change the scene of the crime to a location which might not be under surveillance. Granting access to on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning criminal activity to structure their future operations in such a way as to avoid detection or apprehension, thereby neutralizing law enforcement investigative tools and procedures. Further, granting access to investigative files and records could disclose the identity of confidential sources and other informers and the nature of the information which they supplied, thereby endangering the life or physical safety of those sources of information by exposing them to possible reprisals for having provided information relating to the criminal activities of those individuals who are the subject of the investigative files and other records. Confidential sources and other informers might refuse to provide criminal investigators with valuable information if they could not be secure in their knowledge that their identities would not be revealed through disclosure of either their names or the nature of the information they supplied, and this would seriously impair the ability of the Customs Service to carry out its mandate to enforce the Customs criminal and related laws. Additionally, providing access to records contained in the PBRN system of records could reveal the identities of undercover law enforcement officers who compiled information regarding an individual's criminal activities, thereby endangering the life or physical safety of those undercover officers or their families by exposing them to possible reprisals.

(c) 5 U.S.C. 552a(d)(2), (3) and (4), (e)(4)(H) and (f)(4), which are dependent upon access having been granted to records pursuant to the provisions cited in paragraph (b) above, enable individuals to contest (seek amendment to) the content of records contained in a system of records and require an agency to note an amended record and provide a copy of an individual's statement (of disagreement with the agency's refusal to amend a record) to persons or other agencies to whom the record has been disclosed. The Department believes that the reasons set forth in paragraph (b) above are equally applicable to this subparagraph and, accordingly, those reasons are hereby incorporated herein by reference.

(d) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request; such accountings must state the date, nature and purpose of each disclosure of a record and the name and address of the recipient. The Department believes that application of this provision to the PBRN system of records would impair the ability of other law enforcement agencies to make effective use of information provided by the Customs Service in connection with the investigation, detection and apprehension of violators of the criminal laws enforced by those other law enforcement agencies. Making accountings of disclosure available to violators would alert those individuals to the fact that another agency is conducting an investigation into their criminal activity, and this could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and the dates on which that investigation was

active. Violators possessing such knowledge would thereby be able to take appropriate measures to avoid detection or apprehension by altering their operations, by transferring their criminal activities to other geographical areas or by destroying or concealing evidence which would form the basis for their arrest. In addition, providing violators with accountings of disclosure would alert those individuals to the fact that the Department has information regarding their criminal activities and could inform those individuals of the general nature of that information; this, in turn, would afford those individuals a better opportunity to take appropriate steps to avoid detection or apprehension for violations of customs and related criminal laws.

(e) 5 U.S.C. 552a(c)(4) requires that an agency inform any person or other agency about any correction or notation of dispute made by the agency in accordance with 5 U.S.C. 552a(d) of any record that has been disclosed to the person or agency if an accounting of the disclosure was made. Since this provision is dependent on an individual's having been provided an opportunity to contest (seek amendment to) records pertaining to him, and since the PBRN system of records is proposed to be exempted from those provisions of 5 U.S.C. 552a relating to amendments of records as indicated in paragraph (c) above, the Department believes that this provision should not be applicable to the PBRN system of records.

(f) 5 U.S.C. 552a(e)(4)(I) requires that an agency publish a public notice listing the categories of sources for information contained in a system of records. The Department believes that application of this provision to the PBRN system of records could compromise its ability to conduct investigations and to identify, detect and apprehend violators of customs and related criminal laws because revealing sources for information could:

(1) Disclose investigative techniques and procedures;

(2) Result in threatened or actual reprisal directed to informers by the subject under investigation; and

(3) Result in the refusal of informers to give information or to be candid with criminal investigators because of the knowledge that their identities as sources might be disclosed.

(g) 5 U.S.C. 552a(e)(1) requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term ''maintain'' as defined in 5 U.S.C. 552a(a)(3) includes ''collect'' and ''disseminate.'' At the time that information is collected by the Department, there is often insufficient time to determine whether the information is relevant and necessary to accomplish a purpose of the Department; in many cases information collected may not be immediately susceptible to a determination of whether the information is relevant and necessary, particularly in the early stages of investigation. In many cases information which initially appears to be irrelevant and unnecessary may, upon further evaluation or upon continuation of the investigation, prove to have particular relevance to an enforcement program of the Department. Further, not all violations of law discovered during a Customs Service criminal investigation fall within the investigative jurisdiction of the Department; in order to promote effective law enforcement, it often becomes necessary and desirable to disseminate information pertaining to such violations to other law enforcement agencies which have jurisdiction over the offense to which the information relates. The Department should not be placed in a position of having to ignore information relating to violations of law not within its jurisdiction where that information comes to the attention of the Department through the conduct of a lawful Customs Service investigation. The Department therefore believes that it is appropriate to exempt the PBRN system of records from the provisions of 5 U.S.C. 552a(e)(1).

(h) 5 U.S.C. 552a(e)(2) requires that an agency collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The Department believes that application of this provision to the PBRN system of records would impair the ability of the Customs Service to conduct investigations and to identify, detect and apprehend violations of customs and related criminal laws for the following reasons:

(1) Most information collected about an individual under criminal investigation is obtained from third parties such as witnesses and informers, and it is usually not feasible to rely upon the subject of the investigation as a source for information regarding his or her criminal activities;

(2) An attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his or her criminal activities so as to avoid apprehension;

(3) In certain instances the subject of a criminal investigation is not required to supply information to criminal investigators as a matter of legal duty; and

(4) During criminal investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources in order to verify information already obtained.

(i) 5 U.S.C. 552a(e)(3) requires that an agency inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual: the authority which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary; the principal purposes for which the information is intended to be used; the routine uses which may be made of the information; and the effects on the individual of not providing all or part of the requested information. The Department believes that the PBRN system of records should be exempted from this provision in order to avoid adverse effects on its ability to identify, detect and apprehend violators of customs and related criminal laws. In many cases information is obtained by confidential sources or other informers or by undercover law enforcement officers under circumstances where it is necessary that the true purpose of their actions be kept secret so as to not let it be known by the subject of the investigation or his associates that a criminal investigation is in progress. Further, if it became known that the undercover officer was assisting in a criminal investigation, that officer's life or physical safety could be endangered through reprisal, and, further, under such circumstances it may not be possible to continue to utilize that officer in the investigation. In many cases individuals for personal reasons would feel inhibited in talking to a person representing a criminal law enforcement agency but would be willing to talk to a confidential source or undercover officer who they believed was not involved in law enforcement activities. In addition, providing a source of information with written evidence that he was a source, as required by this provision, could increase the likelihood that the source of information would be the subject of retaliatory action by the subject of the investigation. Further application of this provision could result in an unwarranted invasion of the personal privacy of the subject of the criminal

investigation, particularly where further investigation would result in a finding that the subject was not involved in any criminal activity.

(j) 5 U.S.C. 552a(e)(5) requires that an agency maintain all records used by the agency in making any determination about any individual with such accuracy, relevance, timeliness and completeness as is reasonably necessary to assure fairness to the individual in the determination. Since 5 U.S.C. 552a(a)(3) defines ''maintain'' to include ''collect'' and ''disseminate,'' application of this provision to the PBRN system of records would hinder the initial collection of any information which could not, at the moment of collection, be determined to be accurate, relevant, timely and complete. Similarly, application of this provision would seriously restrict the necessary flow of information from the Department to other law enforcement agencies where a Customs Service investigation revealed information pertaining to a violation of law which was under the investigative jurisdiction of another agency. In collecting information during the course of a criminal investigation, it is not possible or feasible to determine accuracy, relevance, timeliness or completeness prior to collection of the information; in disseminating information to other law enforcement agencies it is often not possible to determine accuracy, relevance, timeliness or completeness prior to dissemination because the disseminating agency may not have the expertise with which to make such determinations. Further, information which may initially appear to be inaccurate, irrelevant, untimely or incomplete may, when gathered, grouped, and evaluated with other available information, become more pertinent as an investigation progresses. In addition, application of this provision could seriously impede criminal investigators and intelligence analysts in the exercise of their judgment in reporting on results obtained during criminal investigations. The Department therefore believes that it is appropriate to exempt the PBRN system of records from the provisions of 5 U.S.C. 552a(e)(5).

(k) 5 U.S.C. 552a(e)(8) requires that an agency make reasonable efforts to serve notice on an individual when any record on the individual is made available to any person under compulsory legal process when such process becomes a matter of public record. The Department believes that the PBRN system of records should be exempt from this provision in order to avoid revealing investigative techniques and procedures outlined in those records and in order to prevent revelation of the existence of an on-going investigation where there is a need to keep the existence of the investigation secret.

(l) 5 U.S.C. 552a(g) provides civil remedies to an individual for an agency refusal to amend a record or to make a review of a request for amendment, for an agency refusal to grant access to a record, for an agency failure to maintain accurate, relevant, timely and complete records which are used to make a determination which is adverse to the individual, and for an agency failure to comply with any other provision of 5 U.S.C. 552a in such a way as to have an adverse effect on an individual. The Department believes that the PBRN system of records should be exempted from this provision to the extent that the civil remedies provided therein may relate to provisions of 5 U.S.C. 552a from which the PBRN system of records is proposed to be exempt. Since the provisions of 5 U.S.C. 552a enumerated in paragraphs (a) through (k) above are proposed to be inapplicable to the PBRN system of records for the reasons stated therein, there should be no corresponding civil remedies for failure to comply with the requirements of those provisions to which the exemption is proposed to apply. Further, the Department believes that application of this provision to the PBRN system of records would adversely affect its ability to conduct criminal investigations by exposing to civil court action every stage of the criminal investigative process in which information is compiled or used in order to identify, detect, apprehend and otherwise investigate persons suspected or known to be engaged in criminal conduct in violation of customs and related laws.

b. *Specific exemptions under 5 U.S.C. 552a(k)(2).* Pursuant to the provisions of 5 U.S.C. 552a(k)(2), the Department of the Treasury hereby exempts the Pacific Basin Reporting Network—Treasury/Customs .171, maintained by the United States Customs Service, from the provisions of 5 U.S.C. 552a(c)(3), (d)(1), (2), (3) and (4), (e)(1) and (4)(G), (H) and (I) and (f).

1. *Exempt system.* The Pacific Basin Reporting Network—Treasury/Customs .171 (PBRN), contains information of the type described in 5 U.S.C. 552a(k)(2), and shall be exempt from the provisions of 5 U.S.C. 552a listed in paragraph b. above except as otherwise indicated below.

2. *Reasons for exemptions.* (a) 5 U.S.C. 552a(e)(4)(G) and (f)(1) enable individuals to be notified whether a system of records contains records pertaining to them. The Department believes that application of these provisions to the PBRN system of records would impair the ability of the Department to successfully complete investigations and inquiries of suspected violators of civil and criminal laws and regulations under its jurisdiction. In many cases investigations and inquiries into violations of civil and criminal laws and regulations involve complex and continuing patterns of behavior. Individuals, if informed that they have been identified as suspected violators of civil or criminal laws and regulations, would have an opportunity to take measures to prevent detection of illegal action so as to avoid prosecution or the imposition of civil sanctions. They would also be able to learn the nature and location of the investigation or inquiry and the type of surveillance being utilized, and they would be able to transmit this knowledge to co-conspirators. Finally, violators might be given the opportunity to destroy evidence needed to prove the violation under investigation or inquiry.

(b) 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5) enable individuals to gain access to records pertaining to them. The Department believes that application of these provisions to the PBRN system of records would impair its ability to complete or continue civil or criminal investigations and inquiries and to detect and apprehend violators of customs and related laws. Permitting access to records contained in the PBRN system of records would provide violators with significant information concerning the nature of the civil or criminal investigation or inquiry. Knowledge of the facts developed during an investigation or inquiry would enable violators of criminal and civil laws and regulations to learn the extent to which the investigation or inquiry has progressed, and this could provide them with an opportunity to destroy evidence that would form the basis for prosecution or the imposition of civil sanctions. In addition, knowledge gained through access to investigatory material could alert a violator to the need to temporarily postpone commission of the violation or to change the intended point where the violation is to be committed so as to avoid detection or apprehension. Further, access to investigatory material would disclose investigative techniques and procedures which, if known, could enable violators to structure their future operations in such a way as to avoid detection or apprehension, thereby

neutralizing investigators' established and effective investigative tools and procedures. In addition, investigatory material may contain the identity of a confidential source of information or other informer who would not want his identity to be disclosed for reasons of personal privacy or for fear of reprisal at the hands of the individual about whom he supplied information. In some cases mere disclosure of the information provided by an informer would reveal the identity of the informer either through the process of elimination or by virtue of the nature of the information supplied. If informers cannot be assured that their identities (as sources for information) will remain confidential, they would be very reluctant in the future to provide information pertaining to violations of criminal and civil laws and regulations, and this would seriously compromise the ability of the Department to carry out its mission. Further, application of 5 U.S.C. 552a(d)(1),

(e)(4)(H) and (f)(2), (3) and (5) to the PBRN system of records would make available attorney work products and other documents which contain evaluations, recommendations, and discussions of ongoing civil and criminal legal proceedings; the availability of such documents could have a chilling effect on the free flow of information and ideas within the Department which is vital to the agency's predecisional deliberative process, could seriously prejudice the agency's or the Government's position in a civil or criminal litigation, and could result in the disclosure of investigatory material which should not be disclosed for the reasons stated above. It is the belief of the Department that, in both civil actions and criminal prosecutions, due process will assure that individuals have a reasonable opportunity to learn of the existence of, and to challenge, investigatory records and related materials which are to be used in legal proceedings.

(c) 5 U.S.C. 552a(d)(2)(3) and (4), (e)(4)(H) and (f)(4), which are dependent upon access having been granted to records pursuant to the provisions cited in subparagraph (b) above, enable individuals to contest (seek amendment to) the content of records contained in a system of records and require an agency to note an amended record and to provide a copy of an individual's statement (of disagreement with the agency's refusal to amend a record) to persons or other agencies to whom the record has been disclosed. The Department believes that the reasons set forth in subparagraph (b) above are equally applicable to this subparagraph, and, accordingly, those reasons are incorporated herein by reference.

(d) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request; such accountings must state the date, nature and purpose of each disclosure of a record and the name and address of the recipient. The Department believes that application of this provision to the PBRN system of records would impair the ability of the Customs Service and other law enforcement agencies to conduct investigations and inquiries into civil and criminal violations under their respective jurisdictions. Making accountings available to violators would alert those individuals to the fact that the Department or another law enforcement authority is conducting an investigation or inquiry into their activities, and such accountings could reveal the geographic location of the investigation or inquiry, the nature and purpose of the investigation or inquiry and the nature of the information disclosed, and the dates on which that investigation or inquiry was active. Violators possessing such knowledge would thereby be able to take appropriate measures to avoid detection or apprehension by altering their operations, transferring their activities to other locations or destroying or concealing evidence which would form the basis for prosecution or the imposition of civil sanctions.

(e) 5 U.S.C. 552a(e)(1) requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term ''maintain'' as defined in 5 U.S.C. 552a(a)(3) includes ''collect'' and ''disseminate.'' At the time that information is collected by the Department there is often insufficient time to determine whether the information is relevant and necessary to accomplish a purpose of the Department; in many cases information collected may not be immediately susceptible to a determination of whether the information is relevant and necessary, particularly in the early stages of investigation or inquiry, and in many cases information which initially appears to be irrelevant and unnecessary may, upon further evaluation or upon continuation of the investigation or inquiry, prove to have particular relevance to an enforcement program of the Department. Further, not all violations of law uncovered during a Customs Service investigation or inquiry fall within the civil or criminal jurisdiction of the Customs Service; in order to promote effective law enforcement it often becomes necessary and desirable to disseminate information pertaining to such violations to other law enforcement agencies which have jurisdiction over the offense to which the information relates. The Department should not be placed in a position of having to ignore information relating to violations of law not within its jurisdiction where that information comes to the attention of the Department through the conduct of a lawful Customs Service civil or criminal investigation or inquiry. The Department therefore believes that it is appropriate to exempt the PBRN system of records from the provisions of 5 U.S.C. 552a(e)(1).

This is being published as a final rule because the amendment to 31 CFR 1.36 has been published by the Department as a proposed and final determination, as noted above, and no comments were received. In addition it does not impose any new requirements on any member of the public. The amendment in question is the most efficient means for the Treasury Department to implement its internal requirements for complying with the Privacy Act. For the above reasons, the Department of the Treasury finds that the expenditure of additional time and money on nonsubstantial administrative changes to these regulations would be unproductive.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, the Department of the Treasury finds good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary and finds good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

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

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that these regulations will not have significant economic impact on a substantial number of small entities because it

concerns the implementation and administration of the Privacy Act within the Department of the Treasury.

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department of the Treasury has determined that this final rule will not impose new recordkeeping, application, reporting or other types of information collection requirements.

Lists of Subjects in 31 CFR Part 1

Privacy.

Part 1 of title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

§ 1.36—[Amended]

2. Section 1.36 of subpart C is amended by adding the following text to the listing in paragraph a. 1. and b. 1. under the heading THE UNITED STATES CUSTOMS SERVICE:

* * * * *

a. * * *

1. * * *

00.171—Pacific Basin Reporting Network

* * * * *

b. * * *

1. * * *

00.171—Pacific Basin Reporting Network

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Dated: May 5, 1997.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

[FR Doc. 97–12611 Filed 5–15–97; 8:45am]

BILLING CODE: 4810–25–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

RIN 0720–AA40

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Selected Reserve Dental Program

AGENCY: Office of the Secretary, DoD.

ACTION: Interim final rule.

SUMMARY: This interim final rule establishes the TRICARE Selected Reserve Dental Program (TSRDP) to provide dental care to members of the Selected Reserves of the Ready Reserve. The rule details operation of the program and seeks comments on our plan to implement the TRSDP.

DATES: This rule is effective August 1, 1997. Public comments must be received by July 15, 1997.

ADDRESSES: TRICARE Support Office (TSO)/Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch; Aurora, Colorado 80045–6900.

FOR FURTHER INFORMATION CONTACT: Mr. Gunther J. Zimmerman, Office of the Assistant Secretary of Defense (Health Affairs), (703) 695–3331.

SUPPLEMENTARY INFORMATION:

I. Overview of the Proposed Rule

Implementation of the TRICARE Selected Reserve Dental Program (TSRDP) was directed by Congress in section 705 of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104–106, which amended title 10, United States Code, by adding section 1076b. This law directed the implementation of a dental program for members of the Selected Reserve of the Ready Reserve, providing for voluntary enrollment and premium sharing between DoD and the enrollee.

Section 702 of the 1997 National Defense Authorization Act amended Title 10, U.S.C., by revising the program's start date, requiring the program to start during fiscal year 1997 and also to conform to several operational requirements. The costs of the program will be shared between the enrollee and the government. The statute directs that a members enrolling in the program shall pay a share of the premium charged for the insurance coverage.

Dental coverage under the TSRDP will provide basic dental care, to include diagnostic services, preventive services, basic restorative services, and emergency oral examinations.

Under this approach, where possible, reservists may make use of participating dental providers in their areas and benefit from the reduced copayments and provider submission of claims and acceptance of contractor allowances and arrangements. TSRDP eligible beneficiaries will obtain information concerning the program and the application process from the contractor.

This interim final rule adopts the statutory preemption authority of 10 U.S.C., section 1103. This statute broadly authorizes preemption of state laws in connection with DoD contracts for medical and dental care. We have made the judgment that preemption is necessary and appropriate to assure the operation of a consistent, effective, and efficient federal program. In addition, the enacting legislation for the TRICARE Selected Reserve Dental Program directs the Department of Defense to utilize full and open competition in selecting a contractor and to implement this program during fiscal year 1997. Absent preemption of certain state and local laws on insurance regulation and other matters, competition would be severely limited and the process substantially delayed.

II. Rulemaking Procedures

Executive Order 12866 requires certain regulatory assessments for any ''significant regulatory action,'' defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a significant regulatory action under the provisions of Executive Order 12866, and it would not have a significant impact on a substantial number of small entities.

The interim final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 55).

The Department is publishing this rule as an interim final rule in order to implement the program in a timely manner. Regulations involving military affairs are exempt from the notice and comment rulemaking procedures of the Administrative Procedures Act. Because this rule deals exclusively with a program for the military reserves, there is a heightened impact on the conduct of affairs peculiar to military functions of the government, and a significant reduced impact on the public. Based on this, it is appropriate, as an exemption to our normal practice of providing an opportunity for prior public comment on all CHAMPUS regulations, to issue this rule as an interim final rule, with a subsequent opportunity for public comment. Public comments are invited. All comments will be carefully considered. A discussion of the major issues received by public comments will be included with the issuance of the permanent final rule, anticipated approximately 90 days after the end of the comment period.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C., Chapter 55.5 U.S.C. 301.

2. Part 199 is amended by adding § 199.21, as follows:

§ 199.21 TRICARE Selected Reserve Dental Program (TSRDP).

(a) *Purpose.* The TSRDP is a premium based indemnity dental insurance coverage program that will be available to members of the Selected Reserve of the Ready Reserve. Dental coverage will be available only to members of the Selected Reserve, no family coverage will be offered. Benefits are limited to preventive, restorative and emergency care. Premium costs for this coverage will be shared by the enrollee and the government.

(b) *General provisions.* The TSRDP is authorized by 10 U.S.C. 1076b.

(c) *Definitions.* Except as may be specifically provided in this section, to the extent terms defined in §§ 199.2 and 199.13(b) are relevant to the administration of the TRICARE Selected Reserved Dental Program, the definitions contained in those sections shall apply to the TSRDP as they do to CHAMPUS and the active duty dependents dental plan.

(d) *Eligibility and enrollment—(1) Eligibility.* Enrollment in the TRICARE Selected Reserve Dental Program is open to members of the Selected Reserve of the Ready Reserve.

(2) *Notification of eligibility.* The contractor will notify persons eligible to receive dental benefits under the TRICARE Selected Reserve Dental Program.

(3) *Election of Coverage.* Following this notification, interested reservists may elect to enroll. In order to obtain dental coverage, written election by eligible beneficiary must be made.

(4) *Enrollment.* Enrollment in the TRICARE Selected Reserve Dental Program is voluntary and will be accomplished by submission of an application to the TSRDP contractor.

(5) *Period of coverage.* TRICARE Selected Reserve Dental Program coverage is terminated on the last day of the month in which the member is discharged, transferred to the Individual Ready Reserve, Standby Reserve, or Retired Reserve, or ordered to active duty for a period of more than 30 days.

(e) *Premium sharing.* The Government and the enrollee will share in the monthly premium cost.

(f) *Premium Payments.* The enrollee will be responsible for a monthly premium payment in order to obtain the dental insurance.

(1) *Premium payment method.* The premium payment may be collected pursuant to procedures established by the Assistant Secretary of Defense (Health Affairs).

(2) *Effects of failure to make premium payments.* Failure to make monthly renewal premium payments will result in the enrollee being disenrolled from the TSRDP and subject to lock-out period of 12 months. Following this period of time, eligible reservists will be able to enroll if they so choose.

(3) *Member's share of premiums.* The cost of the TSRDP monthly premium will be shared between the Government and the enrollee. Interested eligible reservists may contact the dental contractor to obtain the enrollee premium cost. The members's share may not exceed $25 per month.

(g) *Plan Benefits.* The TSRDP will provide basic dental coverage, to include diagnostic services, preventive services, basic restorative services, and emergency oral examinations. The following is the TSRDP covered dental benefit (using the American Dental Association, The Council on Dental Care Program's Code On Dental Procedures and Nomenclature):

(1) Diagnostic: Comprehensive oral examination (00150), and Periodic oral examination (00120), Intraoral-complete series (including bitewings) (00210); Intraoral-periapical-first film (00220); Intraoral-periapical-each additional film (00230); Bitewings-single film (00270); Bitewings-two films (00272); Bitewings-four films (00274); Panoramic film (00330; Pulp Vitality Tests (00460).

(2) Preventive: Prophylaxis-adult (limit—two per year) (01110); Topical application of fluoride (excluding prophylaxis)—adult (01204).

(3) Restorative: Amalgam-one surface, permanent (02140); Amalgam-two surfaces, permanent (02150); Amalgam-three surfaces; permanent (02160); Amalgam-four or more surfaces, permanent (02161); Resin-one surface, anterior (02330); Resin-two surfaces, anterior (02331); Resin-three surfaces, anterior (02332); Resin-four or more surfaces or involving incisal angle (anterior) (02335); Pin retention-per tooth, in addition to restoration (02951).

(4) Oral Surgery: Single tooth (07110); Each additional tooth (07120); Root removal-exposed roots (07130); Surgical removal of erupted tooth requiring evaluation of mucoperiosteal flap and removal of bone and/or section of tooth (07210); Surgical removal of residual tooth roots (cutting procedure) (07250).

(5) Emergency: Emergency oral examination (00130); Palliative (emergency) treatment of dental pain-minor procedures (09110).

(h) *Maximum Annual Cap.* TSRDP enrollees will be subject to a maximum $1,000.00 of paid allowable charges per year.

(i) *Annual Review of Rates.* TSRDP premiums will be determined as part of the competitive contracting process. The contractor will annually notify eligible reservists of the TSRDP premium rates.

(j) *Authorized Providers.* The TSRDP enrollee may seek covered services from any provider who is fully licensed and approved to provide dental care in the state where the provider is located.

(k) *Benefit Payment.* Enrollees are not required to utilize the special network of dental providers established by the TSRDP contractor. For enrollees who do use this network, however, providers shall not balance bill any amount in excess of the maximum payment allowable by the TSRDP. Enrollees using non-network providers may be balanced billed such as amount. The maximum payment allowable by the TSRDP (minus the appropriate cost-share) will be the lesser of:

(1) Billed charges; or

(2) Usual, Customary and Reasonable rates, in which the customary rate is calculated at the 85th percentile of billed charges in that geographic area, as measured in an undiscounted charge profile in 1995 or later for that geographic area (as defined by three-digit zip code).

(l) *Appeal and Hearing Procedures.* All levels of appeals and grievances established by the Contractor for internal review shall be exhausted prior to forwarding to OCHAMPUS for a final review. Procedures comparable to those established under § 199.13(h) shall apply.

(m) *Preemption of State Laws.* Pursuant to 10 U.S.C. 1103, any state or local law or regulation relating to health or dental insurance, prepaid health or dental plans, or other health or dental care delivery, administration, and financing methods is preempted and does not apply in connection with the TRICARE Selected Reserve Dental Program contract. Any such law, or regulation pursuant to such law, is without any force or effect, and State or local governments have no legal authority to enforce them in relation to the TRICARE Selected Reserve Dental Program contract. (However, the Department of Defense may, by contract, establish legal obligations on the part of the TRICARE Selected Reserve Dental Program contractor to conform with requirements similar or identical to

requirements of State or local laws or regulations.)

(n) *Director, OCHAMPUS.* The Director, OCHAMPUS, may establish other rules and procedures for the administration of the TRICARE Selected Reserve Dental Program.

Dated: May 12, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–12871 Filed 5–15–97; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300490; FRL–5718–1]

RIN 2070-AB78

Emamectin Benzoate; 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 insecticide emamectin benzoate: 4″-epi-methylamino-4″-deoxyavermectin B1 benzoate in or on the raw agricultural commodities head and Napa (chinese) cabbage in connection with EPA's granting an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on head and Napa cabbage in Hawaii. The tolerance will expire and is revoked on December 31, 1998.

DATES: This regulation becomes effective May 16, 1997. Objections and requests for hearings must be received by EPA on or before July 15, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300490], 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–300490], must be submitted to: Public Information and Records Integrity Branch, Information Resources and Services 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–300490]. 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), 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: The regulations governing section 18 require that the Agency publish a notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing the use of an unregistered chemical [40 CFR 166.24]. Emamectin benzoate is an active ingredient not currently found in any registered product. Accordingly, a notice of receipt of this request was published in the **Federal Register** on April 11, 1997. One comment was received regarding the requirement for a groundwater monitoring study. EPA is not requiring such study under section 18. Based on the available environmental fate data, the Agency has determined that the use proposed by this emergency exemption will not cause unreasonable adverse effects on the environment. 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 a tolerance for residues of the insecticide 4″-epi-methylamino-4″-deoxyavermectin B1 benzoate, also referred to in this document as emamectin benzoate, in or on head and Napa cabbage at 0.025 part per million (ppm). This tolerance will expire and be revoked by EPA on December 31, 1998. After December 31, 1998, EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

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.* Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under 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) 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 and in residential settings, 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. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Emamectin Benzoate on Head and Napa Cabbage and FFDCA Tolerances

The Hawaii Department of Agriculture has requested a specific exemption for the use of emamectin benzoate on head and Napa cabbage to control the diamondback moth (*Plutella xylostella*). The Applicant states that although there are numerous insecticides registered for use against the diamondback moth (DBM) on cabbage in Hawaii, these pesticides do not provide effective control. DMB has become resistant to most of these insecticides and label restrictions on others render their control inadequate for this pest. Growers using these products have experienced significant yield reductions due to feeding damage by DBM larvae. *Bacillus thuringiensis* (Bt) based insecticides were once very effective, but in 1990 scientists at the University of Hawaii documented DBM resistance to first generation Bt products; more recently these same scientists have documented a 20-fold resistance to Bt toxin CryIC. Based on these trends, it is expected that the DBM will quickly develop resistance to these second generation Bt products if they are overused. Alternative control practices include the use of tolerant cabbage varieties, natural enemy augmentation, and the application of overhead irrigation. Management programs incorporating these practices have been adopted by many cabbage growers; however the growers continued to experience moderate to excessive yield losses due to DBM injury. Thus, without an effective control such as emamectin benzoate, cabbage growers in Hawaii will likely suffer severe economic losses. EPA has authorized under FIFRA section 18 the use of emamectin benzoate on cabbage for control of the DBM. After having reviewed the submission, EPA concurs that emergency conditions exist for this state.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of emamectin benzoate in or on cabbage. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. This tolerance will permit the marketing of head and Napa cabbage 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 is revoked on December 31, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on head and Napa cabbage after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, section 18 of FIFRA. 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 emamectin benzoate meets EPA's registration requirements for use on head and Napa cabbage or whether a permanent tolerance for this use would be appropriate. This tolerance does not serve as a basis for registration of emamectin benzoate by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Hawaii to use this pesticide 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 emamectin benzoate, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

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 MOE 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, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). 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.

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. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues.

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.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by emamectin benzoate are discussed below.

1. *Acute toxicity.* The Agency has determined that the NOEL of 0.075 mg/kg/day from a 15-day feeding study in mice should be used to evaluate acute dietary risk. At the lowest effect level (LEL) of 0.10 mg/kg/day, there were clinical signs of tremors and histological evidence of degenerative effects in the sciatic nerve. This acute dietary risk assessment evaluates neurological risks to all population subgroups.

2. *Short- and intermediate-term dermal and inhalation toxicity.* The Agency has determined that a NOEL of 2.4 mg/kg/day from a 21-day dermal toxicity study in rabbits should be used to assess risks from short and intermediate-term dermal toxicity. At the LEL of 6.0 mg/kg/day, there were axonal degenerative lesions in the sciatic nerve and spinal cord. For the short- and intermediate-term inhalation toxicity, the Agency has determined that a NOEL of 0.075 mg/kg/day from the 15-day feeding study in mice [same study used in the acute dietary risk assessment] should be used to assess risks for occupational scenarios since no suitable inhalation toxicity study is available. At the LEL of 0.10 mg/kg/day, there were tremors, and histological degenerative effects in the sciatic nerve.

3. *Chronic risk.* The Agency has established a provisional RfD for emamectin benzoate at 0.000083 mg/kg/day. The provisional RfD was based on one-year and 90-day feeding studies in dogs with a NOEL of 0.25 mg/kg/day and an uncertainty factor of 3000 based on severe neurological effects, the steep dose response in the dog studies, data gaps in the chronic studies in mice and rats, and the extra-sensitivity for infants and children which was seen in the developmental neurotoxicity study. At the LEL of 0.50 mg/kg/day, effects in both sexes consist of axonal degeneration in the pons; medulla, sciatic, sural, and tibial; whole body tremors; stiffness of hind legs; spinal cord axonal degeneration; and muscle fiber degeneration in females. At the highest dose tested, 0.75 mg/kg/day, males were sacrificed after 7 weeks, and additional effects were mydriasis, cellular degeneration of retina, axonal degeneration of optic nerve, decreased body weight gain and decreased food consumption.

The Agency has also determined that a non-dietary chronic toxicity endpoint does not exist for emamectin benzoate and a chronic risk assessment is not required for occupational exposures.

4. *Cancer risk.* The carcinogenicity studies for emamectin benzoate have not been fully evaluated, therefore a cancer risk assessment is not possible at this time.

B. Exposures and Risks

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). In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children.

1. *From food and feed uses.* Emamectin benzoate is not currently registered for food uses and no tolerances have been established. Risk assessments were conducted by EPA to assess dietary exposures and risks from emamectin benzoate as follows:

i. *Acute risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure.

Since emamectin benzoate is not currently registered for food uses, the use proposed by this Section 18 is the only commodity considered in the acute dietary risk assessment. In conducting this risk assessment, the Agency used the tolerance value of 0.025 ppm and assumed 100% crop treated. Thus, the acute dietary risk estimates are considered conservative and therefore protective of any acute exposure scenario. The acute dietary risks from this proposed Section 18 use do not exceed the Agency's level of concern. The resulting MOEs for the different population subgroups ranged from 150 to 540. Further refinement using anticipated residue values and percent crop-treated data would result in lower acute dietary risk estimates.

ii. *Chronic risk.* For the chronic dietary risk assessment, the Agency used the tolerance value of 0.025 ppm, and assumed that all cabbage consumed in the U.S. will contain residues at the tolerance level. Thus, in making a safety determination for this tolerance, EPA is taking into account a conservative exposure assessment. With this Section 18 use of emamectin benzoate on cabbage, the TMRC estimates

represented 0% to 4% of the RfD (all TMRCs were <0.00001 mg/kg/day). The EPA has therefore concluded that the chronic dietary risks from the proposed Section 18 use do not exceed our level of concern.

2. *From drinking water.* No Maximum Concentration Level has been established for residues of emamectin benzoate in drinking water. No Health Advisory Levels for emamectin benzoate 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 exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause emamectin benzoate to exceed the RfD if the tolerance being considered in this document is granted. The Agency has therefore concluded that the potential exposures associated with emamectin benzoate 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.

3. *From non-dietary exposure.* Emamectin benzoate is not currently registered for non-food uses.

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 emamectin benzoate has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. For the purposes of this tolerance action, therefore, EPA has not assumed that emamectin benzoate has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* For the U.S. population, the calculated dietary (food only) MOE value is 250. This MOE value does not exceed the Agency's level of concern for acute dietary exposures. Despite the potential for exposure to emamectin benzoate from drinking water, EPA does not expect the aggregate acute risk (food + water) to exceed the Agency's level of concern.

2. *Chronic risk.* Using the conservative TMRC exposure assumptions described above, EPA has concluded that exposure to emamectin benzoate from food will utilize 1% 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 emamectin benzoate in drinking water, 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 emamectin benzoate residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold margin of exposure/uncertainty factor 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/safety factor.

In assessing the potential for additional sensitivity of infants and children to residues of emamectin benzoate, EPA considered data from developmental toxicity studies in rats and rabbits, developmental neurotoxicity studies in rats, and a two-generation reproductive toxicity study in rats. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during prenatal development. Reproduction studies provide information relating to pre- and post-natal effects from exposure to the

pesticide, information on the reproductive capability of mating animals, and data on systemic toxicity.

1. *Developmental toxicity studies.*—a. *Developmental toxicity study in rats.* The maternal (systemic) NOEL was 2 mg/kg/day, based on decreased weight gain at the lowest observed effect level (LOEL) of 4 mg/kg/day. The developmental (fetal) NOEL was 4 mg/kg/day, based on altered growth and extra ribs at the LOEL of 8 mg/kg/day.

b. *Developmental neurotoxicity study in rats.* The maternal (systemic) NOEL was 2.5 mg/kg/day. The developmental (pup) NOEL was 0.10 mg/kg/day [lowest dose tested], based on neurotoxicity findings at the LOEL of 0.60 mg/kg/day.

c. *Developmental study in rabbits.* The maternal (systemic) NOEL was 3 mg/kg/day, based on decreased weight gain and neurotoxicity at the LOEL of 6 mg/kg/day. The developmental (fetal) NOEL was 6 mg/kg/day [highest dose tested].

2. *Reproductive toxicity studies.*—a. *Reproductive toxicity study in rats.* The parental (systemic) NOEL was 0.6 mg/kg/day, based on neurological lesions and decreased weight gain at the LOEL of 1.8 mg/kg/day. The developmental (pup) NOEL was 0.6 mg/kg/day, based on neurological effects at the LEL of 1.8 mg/kg/day.

The reproductive NOEL was 0.8 mg/kg/day, based on decreased fecundity and fertility indices at the LEL of 1.8 mg/kg/day.

3. *Pre- and post-natal sensitivity.* Based on the results of the developmental neurotoxicity study for emamectin benzoate, the developmental findings [neurotoxicity], which may be due to pre- or/and post-natal extra-sensitivity, occurred in the absence of maternal effects. These results indicate extra-sensitivity for infants and children and an additional uncertainty factor of 3 was added to the provisional RfD due to these results.

Based on the reproductive toxicity study discussed above, for emamectin benzoate there does not appear to be a special sensitivity for post-natal effects. The NOELs and LOELs for both parental animals and offspring occur at the same doses of 0.6 and 1.8 mg/kg/day, respectively.

4. *Acute risk.* The acute dietary (food only) MOE for infants (< 1 year) was calculated to be 150, and that for children (1-6 years) was calculated to be 150. The acute dietary (food only) MOE for females 13+ years old (accounts for both maternal and fetal exposure) is 420. These MOE calculations are based on the NOEL (0.075 mg/kg/day) from a 15-day feeding study in mice. This risk assessment also assumed 100% crop-treated with tolerance level residues on all treated crops consumed, resulting in an over-estimate of dietary exposure. Despite the potential for exposure to emamectin benzoate in drinking water, EPA does not expect the aggregate acute exposure (food + water) to result in an MOE of less than 100. The large acute dietary MOE calculated for females 13+ years old provides assurance that there is a reasonable certainty of no harm for both females 13+ years and the pre-natal development of infants.

5. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that the percent of the RfD that will be utilized by dietary (food only) exposure to residues of emamectin benzoate ranges from 0% for non-nursing infants less than one year old, up to 1% for non-nursing infants (<1 year old), children (1-6 years old), and children (7-12 years old). Despite the potential for exposure to emamectin benzoate in drinking water, 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 emamectin benzoate residues.

V. Other Considerations

A. Metabolism in Plants and Animal

Plant metabolism studies for emamectin benzoate on cabbage, head lettuce, and sweet corn have been submitted to the Agency, however, the studies have not been fully evaluated to determine the residue(s) of concern. For the purposes of this Section 18, the regulated residues of concern are the parent compound emamectin benzoate (including the 4″hylamino-4″-deoxyavermectin B1A and the 4″-epi-methylamino-4″-deoxyavermectin B1B components), its delta-8,9-isomer, and the degradation products 4″-deoxy-4″-epi-(N-formyl)-avermectin B1, 4″-deoxy-4″-epi-(N-formyl-N-methyl)-avermectin B1, and 4″-deoxy-4″-epi-amino avermectin B1.

B. Analytical Enforcement Methodology

There is a practical analytical method for detecting and measuring levels of emamectin benzoate in or on cabbage with a limit of detection that allows monitoring of food with residues at or above the level set in this tolerance. The method has undergone succesful independent laboratory validation, but has not been forwarded to the EPA Analytical Chemistry Laboratory pending EPA's determination of emamectin benzoate regulable residues of concern.

C. Magnitude of Residues

Regulable residues of emamectin benzoate are not expected to exceed 0.025 ppm in/on cabbage as a result of this Section 18 use. Secondary residues are not expected in animal commodities as no feed items are associated with this Section 18 use.

D. International Residue Limits

No CODEX, Canadian, or Mexican maximum residue limits/tolerances have been established for emamectin benzoate at this time.

VI. Conclusion

Therefore, a tolerance in connection with the FIFRA section 18 emergency exemptions is established for residues of emamectin benzoate in or on head and Napa cabbage at 0.025 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 July 15, 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 control number [OPP–300490]. 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 Information and Records Integrity Branch, Information Resources and Services 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. 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).

List of Subjects in 40 CFR Part 180

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

Dated: May 8, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.505 is added to read as follows:

§ 180.505 Emamectin benzoate; tolerances for residues.

(a) *General.* [Reserved]

(b) *Section 18 emergency exemptions.* A time-limited tolerance is established for residues of the insecticide emamectin benzoate: 4″-epi-methylamino-4″-deoxyavermectin B1 benzoate in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerance will expire and is revoked on the date specified in the following table.

Commodity	Parts per million	Expiration/ Revocation Date
Cabbage (head and Napa)	0.025	December 31, 1998.

(c) *Tolerances with regional restrictions.* [Reserved]

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

[FR Doc. 97–12787 Filed 5–15–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300487; FRL–5716–8]

Carbon Disulfide; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of the nematicide, insecticide, and fungicide, carbon disulfide (Chemical Code Number 16401 and CAS Number 75–15–0), in or on the food commodities almond nutmeat, almond hulls, peaches, and plums (fresh prunes) from the application of sodium tetrathiocarbonate (Chemical Code Number 128904 and CAS Number 7345–69–9). Entek Corporation submitted a petition to EPA under the

Federal Food, Drug, and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170) requesting the tolerances.

DATES: This regulation becomes effective May 16, 1997. Objections and hearing requests must be received on or before July 15, 1997.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP–300487], 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: 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 document 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 be submitted to OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP–300487]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 229, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–305–7740), e-mail: giles-parker.cynthia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 12, 1997 (62 FR 6526)(FRL–5586–5), 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 tolerance petition (PP 5F4482) by Entek Corporation, P.O. Box 458, Brea, CA 92622–0458 to EPA requesting that the Administrator amend 40 CFR part 180 by establishing a tolerance for residues of the nematicide, insecticide, and fungicide, carbon disulfide, in or on the food commodities almond nutmeat, almond hulls, peaches, and plums (fresh prunes) at 0.1 parts per million (ppm) from the application of sodium tetrathiocarbonate. There were no comments received in response to the notice of filing.

Sodium tetrathiocarbonate stoichiometrically converts to carbon disulfide, sodium hydroxide, hydrogen sulfide and sulfur in the soil after application to the crops. Carbon disulfide is the pesticide's active compound.

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

I. Toxicological Profile

1. The toxicology data for sodium tetrathiocarbonate include:

a. A rat acute oral study with an LD_{50} of 587 milligrams (mg)/kilogram (kg) for females and 631 mg/kg for combined sexes for sodium tetrathiocarbonate. The LD_{50} for carbon disulfide is 456 mg/kg.

b. A developmental toxicity study in rats for sodium tetrathiocarbonate with a maternal no-observed effect level (NOEL) of 150 mg/kg and a lowest effect level (LEL) of 400 mg/kg (death) and a developmental NOEL of 450 mg/kg.

c. A developmental toxicity study in rabbits for sodium tetrathiocarbonate with a maternal NOEL of 75 mg/kg and a LEL of 150 mg/kg (convulsions, prostration) and a developmental NOEL of 150 mg/kg and a LEL of 185 mg/kg (increased resorption, post implantation loss, increase incidence 13th rib).

d. Sodium tetrathiocarbonate was negative in a bacterial gene mutation study with and without S9 activation, unscheduled mammalian DNA synthesis, and *in vitro* chromosomal aberration without S9 activation, but weakly positive with S9 activation.

2. The toxicology data for carbon disulfide include:

a. In a 90–day rat inhalation study with carbon disulfide the NOEL for neuropathology was 50 ppm, the LOEL was 300 ppm based on axonal swelling in the spinal cord and peripheral nerves. No NOEL was determined for brain-weight effects.

b. In a 90–day rat inhalation study with carbon disulfide the NOEL was 50 ppm and the LEL was 300 ppm (axonal swelling in the spinal cord and peripheral nerves.

c. In a 90–day mouse inhalation study with carbon disulfide the NOEL was 300 ppm and the LEL was 800 ppm (lesions of peripheral nerves, spinal cord, kidney and spleen).

d. A developmental toxicity study in rats with carbon disulfide with a maternal no-observed effect level (NOEL) of 100 mg/kg/day and a LEL of 200 mg/kg/day based on clinical signs and decreased body-weight gains and a developmental NOEL of 100 mg/kg/day and developmental LEL of 200 mg/kg/day, based on decreased fetal body weight in both sexes.

e. A developmental toxicity study in rabbits with carbon disulfide with no NOEL for maternal effects (the number and percentage of does with 100% intrauterine deaths and the percentage of resorptions/litter [mean litter percentage] were increased in a dose-related manner with statistical significance at all dose levels for mean litter percentage). The NOEL for developmental toxicity was 75 mg/kg/day with a LEL of 150 mg/kg/day based on increased malformations.

II. Aggregate 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).

1. *From food and feed uses.* The nature of residues is understood. Entek Corporation has documented that the level of free or bound carbon disulfide is extremely low in the treated crops (less than 50 parts per billion (ppb)). Carbon disulfide is a naturally occurring compound found in grapes and citrus at 5 to 20 ppb and up to 1 to 73 ppm in Shiitake mushrooms. The Analytical Method has been validated. A tolerance for carbon disulfide is established at the analytical level of quantification of 0.1 ppm. Dietary exposure to carbon disulfide from treatment of the almonds, peaches and plums with sodium tetrathiocarbonate will not be appreciably different from the natural background levels of carbon disulfide in

these crops. Therefore, further toxicity testing for carbon disulfide was not required and the standard risk assessment approach of using the Reference Dose (RfD) based on systemic toxicity are not relevant to this petition.

2. *From potable water.* Two prospective ground water monitoring studies were conducted for sodium tetrathiocarbonate. In both studies, sodium tetrathiocarbonate was applied above very shallow aquifers (3 to 7 ft. below the surface) and the ground water was analyzed for carbon disulfide. Transient groundwater contamination with carbon disulfide was detected. Carbon disulfide, however, which is very volatile rapidly moves upward through the soil profile and diffuses to the atmosphere. With the proposed and registered uses of sodium tetrathiocarbonate only in the Western United States with its deeper aquifers and a label restriction prohibiting application within 100 feet of a potable water well, carbon disulfide is not likely to be a residual ground water contaminant.

3. *From non-dietary uses.* There are no non-food uses of sodium tetrathiocarbonate registered under the Federal Insecticide, Fungicide and Rodenticide Act, as amended. No non-dietary exposures are expected for the general population.

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.

EPA does not have, at this time, available data to determine whether carbon disulfide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. There is the possibility that other pesticides such as metam sodium or the EDBC's (such as zineb or maneb) may degrade to carbon disulfide. However, we do not have information to indicate that use of the other pesticides would raise the level of carbon disulfide in treated crops above the background level. For the purposes of this tolerance action, therefore, EPA has not assumed that carbon disulfide has a common mechanism of toxicity with other substances. The general populations dietary exposure to carbon disulfide from treatment of the crops with sodium tetrathiocarbonate will not be appreciably different from the natural background levels of carbon disulfide the untreated crops.

III. Determination Of Safety For Infants And Children

FFDCA section 408 provides that EPA shall apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base, unless EPA determines that such an additional factor is not necessary to protect the safety of infants and children. The level of free or bound carbon disulfide or parent sodium tetrathiocarbonate is extremely low in the treated crops (less than 50 ppb). Carbon disulfide is a naturally occurring compound found in grapes and citrus at 5 to 20 ppb and up to 1 to 73 ppm in Shiitake mushrooms. A tolerance for carbon disulfide is established at the analytical level of quantification of 0.1 ppm. Children's dietary exposure to carbon disulfide resulting from treatment of the almonds, peaches and plums with sodium tetrathiocarbonate will not be appreciably different from the natural background levels of carbon disulfide in the untreated crops.

IV. 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 toxicology studies described above. There was no observed pathology of the endocrine organs in these studies. There is no evidence at this time that carbon disulfide causes endocrine effects.

2. *Metabolism in plants and animals.* The metabolism of carbon disulfide and sodium tetrathiocarbonate in plants is adequately understood. There is no reasonable expectation of secondary residues occurring in milk, eggs, and meat of livestock or poultry.

3. *Analytical method.* An adequate analytical method, gas chromatography, is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 1130A, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA (703–305–5937).

4. *International tolerances.* There are no Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRLs) for carbon disulfide.

V. Summary of Findings

The analysis for carbon disulfide shows the proposed uses on almonds, peaches and plums will not cause exposure at which the Agency believes there is an appreciable risk.

Based on the information cited above, the Agency has determined that the establishment of the tolerances by amending 40 CFR part 180 will be safe; therefore, the tolerances are established as set forth below.

VI. 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 July 15, 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 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.

VII. Public Docket

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket number [OPP–300487] (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 [OPP–300487]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

VIII. 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, 1993), or special considerations 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 the RFA is inapplicable.

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

List of Subjects in 40 CFR Part 180

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

Dated: May 6, 1997

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 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 amending § 180.467 to alphabetically add the food commodities: almond hulls; almond nutmeat; peaches; and plums (fresh prunes) to the table as follows:

§ 180.467 Carbon disulfide; tolerances for residues.

* * * * *

Commodity	Parts per million
Almond hulls	0.1
Almond nutmeat	0.1
* * * * *	
Peaches	0.1
Plums (fresh prunes)	0.1

[FR Doc. 97–12915 Filed 5–15–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300491; FRL–5718–2]

RIN 2070–AB78

Clopyralid; Pesticide Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of the herbicide clopyralid in or on the food commodity canola in connection with EPA's granting emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on canola in Idaho, Montana, Minnesota, North Dakota and Washington. The tolerance will expire and is revoked on July 31, 1998.

DATES: This regulation becomes effective May 16, 1997. Objections and requests for hearings must be received by EPA on or before July 15, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300491],

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–300491], must be submitted to: Public Information and Records Integrity Branch, Information Resources and Services 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–300491]. 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), 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 (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 a tolerance for residues of the herbicide clopyralid, in or on canola at 3 parts per million (ppm). This tolerance will expire and be revoked by EPA on July 31, 1998. After July 31, 1998, EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

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 FFDCA, 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under 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) 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 and in residential settings, 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. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Clopyralid on Canola and FFDCA Tolerances

EPA has authorized under FIFRA section 18 the use of clopyralid on canola for control of perennial sowthistle and/or Canada thistle. Biological and economic assessments indicate that an urgent, non-routine situation exists for the canola crop in the states of North Dakota, Minnesota, Montana, Idaho and Washington, and that losses near 100% will occur where thistle stands are thick. Perennial sowthistle and Canadian thistle are particularly severe in cool, moist weather. After having reviewed the submissions, EPA concurs that emergency conditions exist for these states.

As part of its assessment of these emergency exemptions, EPA assessed the potential risks presented by residues of clopyralid in or on canola. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided 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 will permit the marketing of canola 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 is revoked on July 31, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on canola after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, section 18 of FIFRA. 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 clopyralid meets EPA's registration requirements for use on canola or whether a permanent tolerance for this use would be appropriate. This tolerance does not

serve as a basis for registration of clopyralid by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Idaho, Montana, Minnesota, North Dakota, and Washington to use this pesticide 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 clopyralid, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

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

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

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). 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.

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. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (children 1 to 6 years old) was not regionally based.

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. EPA has sufficient data to assess the hazards of clopyralid and to make a determination on aggregate exposure, consistent with section 408(b)(2), for the time-limited tolerances for residues of clopyralid in or on canola at 3 ppm. EPA's assessment of the dietary exposures and risks associated with establishing this tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by clopyralid are discussed below.

1. *Acute toxicity.* No toxicology studies were identified by the Office of Pesticide Programs (OPP) which demonstrated the need for an acute dietary risk assessment.

2. *Short-term non-dietary inhalation and dermal toxicity.* Based on available data indicating that there was no evidence of toxicity by the dermal or inhalation routes, non-dietary exposure risks were not calculated.

3. *Chronic toxicity.* Based on the available chronic toxicity data, OPP has established the RfD for clopyralid at 0.5 milligrams(mg)/ kilogram(kg)/day. The RfD was established based on an NOEL of 50 mg/kg/day from a 2–year rat feeding study. Effects observed at the lowest effect level (LEL) were decreased mean body weights in females. An uncertainty factor of 100 was used.

4. *Carcinogenicity.* No evidence of carcinogenicity was seen in mice or in rats fed clopyralid for 24 months.

B. Exposures and Risks

In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures from the pesticide residue in food and 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). In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children.

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.431) for residues of clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on a variety of food commodities, including meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep; and milk. Risk assessments were conducted by EPA to assess dietary exposures and risks from clopyralid as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Agency has determined that this risk assessment was not required.

ii. *Chronic exposure and risk.* For the purpose of assessing chronic dietary exposure from clopyralid, EPA assumed tolerance level residues and 100% of crop treated for the proposed and existing food uses of clopyralid. These conservative assumptions result in overestimation of human dietary exposures.

2. *From drinking water.* Studies indicate clopyralid is persistent in the field, very soluble in water, does not hydrolyze, and is very mobile in soil. Therefore, clopyralid has the potential to leach to ground water and/or contaminate surface water through dissolved residues in runoff. There is no entry for clopyralid in the ''Pesticides in Groundwater Data Base'' (EPA 734–12–92–001, September 1992). There is no established Maximum Concentration Level (MCL) for residues of clopyralid in drinking water. No drinking water health advisory levels have been established for clopyralid.

i. *Acute exposure and risk.* The Agency has determined that this risk assessment was not required.

ii. *Chronic exposure and risk.* 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 clopyralid to exceed the RfD if the tolerance being considered in this document was granted. The Agency has therefore concluded that the potential exposures associated with clopyralid 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.

3. *From non-dietary exposure.* Clopyralid is registered by EPA for outdoor Christmas tree plantations, grasses grown for seed, fallow cropland, non-cropland and other non-food uses.

i. *Acute exposure and risk.* The Agency has determined that this risk assessment was not required.

ii. *Chronic exposure and risk.* The Agency has determined that a chronic non-dietary exposure does not exist for clopyralid.

iii. *Short- and intermediate term exposure and risk.* The Agency has determined there are no short- and intermediate endpoints of concern. Therefore, this risk assessment is not required for clopyralid.

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 clopyralid 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, clopyralid 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 clopyralid has a common mechanism of toxicity with other subtances.

C. Aggregate Risks and Determination of Safety For U.S. Population

1. *Acute risk.* There are no acute dietary endpoints of concern; therefore an acute aggregate risk assessment is not required for clopyralid.

2. *Chronic risk.* Using the conservative TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to clopyralid from food will utilize 12% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children (1 to 6 years old), discussed below. EPA

generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to clopyralid in drinking water, 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 clopyralid residues.

3. *Short- and intermediate-term risk.* EPA has determined there are no short- and intermediate-endpoints of concern; therefore, this aggregate risk assessment is not required for clopyralid.

D. Aggregate Cancer Risk for U.S. Population

EPA has determined that there is no evidence of carcinogenicity in rats or mice for clopyralid; therefore, an aggregate cancer risk assessment is not required for clopyralid.

E. Aggregate Risks and Determination of Safety for Infants and Children

In assessing the potential for additional sensitivity of infants and children to residues of clopyralid, 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.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard margin of exposure and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold margin of exposure/uncertainty factor 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/safety factor.

1. *Developmental toxicity studies.* The developmental toxicity NOELs of > 250 mg/kg/day (HDT) in both rats and rabbits demonstrate that there is no developmental (pre-natal) toxicity present for clopyralid. EPA further notes that the developmental NOELs are fivefold higher in both rats and rabbits, respectively, than the NOEL of 50 mg/kg/day from the 2–year feeding study in rats, which is the basis for the RfD.

2. *Reproductive toxicity study.* In the two-generation reproductive toxicity study in rats, the pup toxicity NOEL of 1,500 mg/kg/day (HDT) was greater than the parental (systemic) toxicity NOEL of 500 mg/kg/day.

3. *Pre- and post-natal sensitivity.* The above findings suggest that post-natal development in pups is not more sensitive and that infants and children may not be more sensitive to clopyralid than adult animals. The pup NOEL is thirtyfold higher than the RfD NOEL of 50 mg/kg/day.

4. *Acute risk.* The Agency has determined that this risk assessment was not required.

5. *Chronic risk.* EPA has concluded that the percent of the RfD that will be utilized by chronic dietary exposure to residues of clopyralid ranges from 11% for nursing infants (<1 year old) up to 14% for children 1 to 6 years 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 clopyralid residues in drinking water is not expected to result in an exposure which would exceed the RfD.

6. *Short- or intermediate-term risk.* The Agency has determined there are no short- and intermediate endpoints of concern. Therefore, this risk assessment is not required for clopyralid.

V. Other Considerations

A. Metabolism in Plants and Animals

The metabolism of clopyralid in plants and animals is adequately understood for the purposes of this tolerance. The residue of concern is clopyralid (3,6-dichloro-2-pyridinecarboxylic acid).

B. Analytical Enforcement Methodology

Adequate methods for purposes of data collection and enforcement of tolerances for clopyralid are available. A method for determining clopyralid residues is described in PAM, Vol. II.

C. Magnitude of residues

Residues of clopyralid are not expected to exceed 3 ppm in canola as a result of this use. Clopyralid does not concentrate in canola processed by-products (refined oil and meal). Existing meat/milk/poultry and egg tolerances should be adequate to cover secondary residues which result from feeding canola meal from treated canola.

D. International Residue Limits

There are no Canadian, Mexican, or Codex maximum residue levels established for residues of clopyralid on canola.

VI. Conclusion

Therefore, a tolerance in connection with the FIFRA section 18 emergency exemptions is established for residues of clopyralid in canola at 3 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 July 15, 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 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

EPA has established a record for this rulemaking under docket number [OPP–300491] (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 Information and Records Integrity Branch, Information Resources and Services 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 Virginia address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

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).

List of Subjects in 40 CFR Part 180

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

Dated: May 8, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.431, paragraph (b) is amended by revising the introductory text, the column headings to the table, in the third column of the table by changing ''July 31, 1998'' to read ''7/31/98'' and by adding an entry for canola to the table.

§ 180.431 Clopyralid; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the herbicide clopyralid in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/ Revocation Date
Canola	3	7/31/98
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300492; FRL–5718–4]

RIN 2070–AB78

Pyridaben; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances with an expiration date of May 31, 2001 for residues of the pesticide pyridaben [2-tert-butyl-5-(4-tert-butylbenzylthio)-4-chloropyridazin-3(2H)-one] in or on the food commodities apples, wet apple pomace, pears, citrus, citrus oil, almonds, almond hulls, meat, milk and fat. A petition was submitted by BASF Corporation to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170) requesting the tolerance. These tolerances will expire and are revoked on May 31, 2001.

DATES: This regulation becomes effective May 16, 1997. Objections and

requests for hearings must be received by EPA on or before July 15, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300492], 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–300492], should be submitted to: Public Information and Records Integrity Branch, Information Resources and Services 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.

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–300492]. 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: Marion Johnson Jr. Product Manager (PM) 10, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 210, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305–6788, e-mail: johnson.marion@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, in the March 12, 1997 **Federal Register** (62 FR 11450)(FRL–5592–7), which announced that BASF Corporation had submitted pesticide petitions (PP) 5F4543 (on citrus), and 6F4651 (on apples), 6F4741 (on pears), and 6F4721 (on almonds). Pesticide petitions 5F4543, 6F4651, 6F4741 and 6F4721 requested that the Administrator, pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C 346a, amend 40 CFR part 180 to establish tolerances for residues of the pesticide pyridaben [2-tert-butyl-5-(4-tert-butylbenzylthio)-4-chloropyridazin-3(2H)-one; EPA Chemical No. 129105; CAS No. 96489–71–3] in or on the food commodities: apples, wet apple pomace, pears, citrus, dried citrus pulp, citrus oil, almonds, and almond hulls. The proposed tolerance levels for pyridaben and its metabolites are:

Commodity	Parts per million
Almond hulls	4.0
Almonds	0.05
Apple pomace, wet	1.0
Apples	0.6
Citrus	0.5
Citrus oil	10
Citrus pulp, dried	1.5
Milk	0.01
Fat	0.05
Meat	0.05
Meat by-products	0.05
Pears	0.75

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act, Pub. L. 104–170, BASF included in the notice of filing a summary of the petitions and authorization for the summary to be published in the **Federal Register** in a notice of receipt of the petition. The summary of the petitions prepared by the petitioner contained conclusions and assessments to support its conclusions that the petition complied with FQPA elements set forth in section 408(d)(3) of the FFDCA.

There were no comments received in response to the notice of filing.

I. Statutory Background

Section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., as amended by the Food Quality Protection Act of 1996, (FQPA) Pub. L. 104–170) authorizes the establishment of tolerances (maximum residue levels), exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on food commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA, and hence may not legally be moved in interstate commerce. For a pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136 *et seq*.).

Section 408 was substantially amended by the FQPA. Among other things, the FQPA amends the FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. New section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through food, drinking water, and from pesticide use in gardens, lawns, or buildings (residential and other indoor uses) 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....''

II. Risk Assessment and Statutory Findings — Background

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 the studies have 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. 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 by EPA to pose a reasonable certainty of no harm. For threshold effects other than those assessed under the RfD, EPA generally calculates a margin of exposure (MOE). The MOE is a measure of how close the exposure comes to the NOEL. The NOEL is selected from a study of appropriate duration and route of exposure. The MOE is the NOEL from the selected study divided by exposure. MOEs greater than 100 are generally considered to show 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 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 and exposures resulting from indoor and outdoor residential uses. 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 which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Consistent with sections 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has also assessed the toxicology database for pyridaben in its evaluation of application for registration on citrus, apples, pears and almonds. EPA has sufficient data to assess the hazards of pyridaben and to make a determination on aggregate exposure, consistent with section 408(b)(2), for granting time-limited tolerances for residues of pyridaben on apples at 0.6 ppm, wet apple pomace at 1.0 ppm, pears at 0.75 ppm, citrus at 0.5 ppm, dried citrus pulp at 1.5 ppm, citrus oil at 10.0 ppm, milk at 0.01 ppm, meat at 0.05 ppm, meat by-products at 0.05 ppm, fat at 0.05 ppm, almonds at 0.05 ppm, almond hulls at 4.0 ppm. EPA's assessment of the database, dietary exposures and risks associated with establishing these tolerances follows.

III. Toxicology Database

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by pyridaben are discussed below.

1. A battery of acute toxicity studies placing technical pyridaben in toxicity category II for acute oral toxicity and category III and IV for the remaining studies.

2. Pyridaben was administered in the diet to CD rats at dosages of 0, 30, 65, 155 and 350 ppm for 13 weeks. The NOEL was determined to be 65 ppm (4.94 mg/kg/day) for males; 30 ppm (2.64 mg/kg/day) for females. The lowest observed effect level (LOEL) was determined to be 155 ppm (11.55 mg/kg/day) for males based on reduced body weight gain, food consumption, food efficiency and altered clinical pathology parameters; 65 ppm (5.53 mg/kg/day) for females based on reduced body weight gain and food efficiency.

3. In a 13 week feeding study in dogs, Pyridaben was administered in capsules to beagle dogs at dosages of 0, 0.5, 1.0, 4.0 or 16.0 mg/kg/day. The NOEL was 1.0 mg/kg/day for males and females and the LOEL was 4.0 mg/kg/day for males and females based on an increased incidence of clinical signs and decreased body weight gain.

4. In a 21 day dermal study, rats received repeated topical applications of pyridaben to about 10% of the body surface area at dosages of 30, 100, 300 and 1,000 mg/kg for 21 days produced body weight decreases in the 300 mg/kg/day females and in the 1,000 mg/kg/day males and females. The NOEL was 100 mg/kg/day and the LOEL was 300 mg/kg/day based on decreased body weight gain in females.

5. In a 12–month chronic feeding study in dogs pyridaben was administered in capsules at dosages of 0, 1.0, 4.0, 16.0 or 32.0 mg/kg/day. The NOEL was determined to be < 1.0 mg/kg/day and the LOEL was ≤ 1.0 mg/kg/day based on increased incidence of clinical signs in both sexes and decreased body weight gain in females at 1.0 mg/kg/day.

6. Pyridaben was administered in capsules to beagle dogs at dosages of 0 and 0.5 mg/kg/day for 1 year. The NOEL was determined to be < 0.5 mg/kg/day for males and females and the LOEL was ≤ 0.5 mg/kg/day for males and females based on an increased incidence of clinical signs in both treated sexes and decreased weight gain in the treated females.

7. Pyridaben was administered in the diet to CD-1 mice at dosages of 0, 2.5, 8.0, 25 or 80 ppm for 78 weeks. There was no evidence of a carcinogenic effect of the chemical. The NOEL was determined to be 25 ppm (2.78 mg/kg/day) for males and females and a LOEL of 80 ppm (8.88 and 9.74 mg/kg/day for males and females, respectively). The MTD was determined to be 80 ppm for males and females based on decreased body weight gain, decreased food efficiency and changes in organ weights and histopathology (males).

8. Pyridaben was administered in the diet to groups of Wistar rats for 104 weeks at doses of 0, 4, 10, 28 or 80 ppm to assess carcinogenicity. Additional groups received doses of 0, 4, 10, 28 or

120 ppm for 104 weeks (with an interim sacrifice at 53 weeks) to assess chronic toxicity. There was no treatment-related neoplastic or non-neoplastic pathology in either phases of the study. The NOEL was determined to be 28 ppm in males (1.13 mg/kg/day) and 28 ppm (1.46 mg/kg/day) in females. The LOEL was determined to be 120 ppm (5.00 mg/kg/day) in males and 120 ppm (6.52 mg/kg/day) in females based on decreased body weight gain in males and females and decreased ALT levels in males in the chronic toxicity phase. There was no evidence of a carcinogenic effect of this chemical.

9. Pyridaben was administered to female Sprague-Dawley rats from days 6 through 15 of gestation at dosages of 0, 2.5, 5.7, 13.0 or 30.0 mg/kg/day. Maternal toxicity was evidenced by decreased body weight/body weight gain and food consumption in the 13 and 30 mg/kg/day groups. The Maternal NOEL is 4.7 mg/kg/day (82% of 5.7 mg/kg/day); The Maternal LOEL is 13.0 mg/kg/day based on decreased body weight/weight gain and food consumption during the dosing period. The Developmental NOEL is 13.0 mg/kg/day; a Developmental LOEL of 30 mg/kg/day based on decreased fetal body weight and increased incomplete ossification in selected bones.

10. A study was performed in Himalayan rabbits in which the test compound was administered to groups of female pregnant rabbits by dermal application at dose levels of 0, 70, 170, or 450 mg/kg/day from gestational days 6 to 19, inclusive. The Maternal toxicity, observed at 70 mg/kg/day, was manifested by moderate to severe skin reactions. At ''170 mg/kg/day, there was body weight loss and food consumption and moderate to severe skin reactions in 50% of the animals. In addition, the severity of skin reactions increased in a time-and dose-dependent manner. The maternal systemic NOEL is 70 mg/kg/day. Developmental toxicity observed at 450 mg/kg/day (HDT) consisted of increase in the incidence of fetuses with incompletely ossified skull. The developmental NOEL was 170 mg/kg/day.

11. New Zealand white rabbits were dosed with 0, 1.5, 5, or 15 mg/kg/day pyridaben from day 6 through 19 of gestation. Maternal toxicity was evidenced by a dose-dependent decrease in body weight gain and food consumption at al dose levels. There was also increase incidence of abortions and clinical signs (few feces) in the 15 mg/kg/day group. There was no evidence that the chemical had a developmental effect at any of the tested levels. the maternal NOEL was < 1.5 mg/kg/day and the Maternal LOEL was < 1.5 mg/kg/day based on decreases in body weight gain and food consumption at all dose levels. The developmental NOEL was > 15 mg/kg/day and the Developmental LOEL was > 15 mg/kg/day.

12. In a standard two-generation reproduction study, CD rats were administered pyridaben in the diet at doses of 0, 10, 28 or 80 ppm. There was no effect on reproductive parameters on the dose levels tested. The Parental/Systemic NOEL is 28 ppm (2.20 and 2.41 mg/kg/day for males and females, respectively). The parental/systemic LOEL is 80 ppm (6.31 and 7.82 mg/kg/day for males and females, respectively) based on decreased body weights, body weight gains and food efficiency. The reproductive NOEL is ≥ 80 ppm in males and females. The reproductive LOEL is > 80 ppm in males and females.

13. Mutagenicity studies including Ames testing, *in vitro* cytogenicity (chinese hamster lung cell), *in vivo* micronucleus assay (mouse) and DNA damage/repair (*E. coli*) showed no mutagenic activity associated with pyridaben.

14. In an acute neurotoxicity study, rats were dosed once with 0, 50, 100 and 200 mg/kg body weight (active ingredient equivalents: 44.3, 79.6, and 190 mg/kg for males and 0, 44.5, 99.7, and 190 mg/kg body weight for females). The animals were observed for mortality and clinical signs of toxicity for 14 days post-dosing. No treatment related gross or microscopic neuropathologic findings were present. The NOEL for systemic toxicity is 50 mg/kg/day in both sexes. The LOEL for systemic toxicity is 100 mg/kg in males and females based on the clinical signs of toxicity, and decreased food consumption and body weight gain. Based on the findings of this study (screening battery), the LOEL for neurobehavioral effects was established at 200 mg/kg in males (FOB findings and motor activity); no LOEL was established for females (>HDT).

15. In a subchronic neurotoxicity study pyridaben was administered to CD rats at dietary levels of 0, 30, 100, and 350 ppm (0, 2.5, 8.5 and 28.8 mg/kg/day in males and 0, 2.8, 9.3 and 31.1 mg/kg/day in females, respectively) for 13 weeks. No neuropathological effects were observed. The LOEL was established at 350 ppm (28.8 mg/kg/day in males and 31.1 mg/kg/day in females). The NOEL was established at 100 ppm (8.5 mg/kg/day in males and 9.3 mg/kg/day in females.

B. Toxicology Profile

1. *Toxicity endpoint for dietary exposure*—i. *Chronic effects.* A reference dose (RfD) has been estimated for pyridaben at 0.005 mg/kg/day based on a NOEL of 0.5 mg/kg/day (lowest dose tested) observed in a 1 year dog study for body weight gain reduction. An uncertainty factor of 100 was utilized to account for both interspecies and intraspecies variability.

ii. *Acute toxicity.* To assess acute dietary exposure, the Agency used a toxicity endpoint of 50 mg/kg/day, the NOEL for the acute oral neurotoxicity study in rats.

iii. *Carcinogenicity.* Based on the available carcinogenicity studies in two rodent species, the Agency has classified pyridaben as a Group ''E'' for carcinogenicity (no evidence of carcinogenicity). There was no evidence of carcinogenicity in an 18–month feeding study in mice and a 2–year feeding study in rats at the dose levels tested.

2. *Toxicity endpoints for non-dietary exposure*—i. *short- and intermediate-term risk.* As part of the hazard assessment process, the Agency reviews the available toxicological database to determine the endpoints of concern. For pyridaben, the Agency does not have a concern for a short-term or intermediate-term assessment since the available data do not indicate any evidence of significant toxicity by the dermal or inhalation routes. Therefore, a short-term or intermediate-term assessment was not required. Since there are no residential uses or exposure, a residential risk assessment is not required.

ii. *Chronic non-dietary exposure.* As part of the hazard assessment process an endpoint of concern was determined for the chronic non-dietary assessment. However, during the exposure assessment process, the exposures which would result from the use of pyridaben was 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, a chronic occupational assessment was not required.

C. Aggregate Exposure

1. *Food and feed uses.* For purposes of assessing the potential chronic dietary exposure from the use of pyridaben on citrus, apples, almonds and pears, EPA has estimated aggregate exposure based on Anticipated Residue Contribution (ARC). For plant commodities, anticipated residue levels were calculated from field trials conducted at the maximum proposed

use rate and minimum pre-harvest interval (PHI), and the ratio of organosoluble residues to pyridaben residues. The ARC for processed commodities was based upon the average residue level for that commodity from field trials conducted at the maximum proposed use rate and minimum PHI, the ratio of organosoluble residues to pyridaben residues, and the concentration factor for the processed commodity. In some cases, adjustments for degradation of residues prior to analysis was taken into account. Anticipated residue levels were utilized for livestock feedstuffs to determine the dietary burden for ruminants, as well as for ruminant edible commodities. The proposed pyridaben tolerances result in an ARC that is up to 74 percent of the reference dose for the most sensitive subpopulation. The general population is 11.8 percent of the RfD.

The endpoint for acute dietary risk assessment is the NOEL (50 mg/kg/day) from an acute oral neurotoxicity study in rats. The effects at the LOEL of 100 mg/kg/day were clinical signs of toxicity, and a decrease in food consumption and body weight gain. The DRES detailed acute analysis estimates the distribution of a singe -day exposure for the overall U.S. population and certain subgroups. For acute dietary risk for the population subgroup with the highest exposure, non-nursing infants (<1 year), the estimated margin of exposure (MOE) is 1,250. The margin of exposure (MOE) is a measure of how close the high end exposure comes to the LOEL and is calculated as the ratio of the NOEL to the exposure (NOEL/exposure = MOE). Generally, acute dietary margins of exposure greater than 100 tend to cause no dietary concern. The Agency considers the acute and chronic dietary risks to be acceptable.

In conducting this exposure assessment, EPA has made conservative assumptions— 100 percent of the apples, citrus, almonds and pears will contain pyridaben residues. This will result in an overestimate of human exposure.

2. *Potable water.* The Agency does not have drinking water monitoring data available to perform a quantitative drinking water risk assessment for pyridaben at this time. Based on the available environmental fate data, conservative estimates produced by the Generic Expected Environmental Concentration (GENEEC) model and Leaching Index, environmental concentrations of pyridaben in surface water and the leaching potential of pyridaben have been derived. Pyridaben has been assessed as immobile and thus unlikely to leach to groundwater. For surface water, the GENEEC model estimates body-weight based on chronic exposure values for pyridaben to be 9.7×10^{-7} mg/kg/day for the whole U.S. population and 1.8×10^{-6} mg/kg/day for non-nursing infants (< 1 year). These values represent < 0.1% of the RfD. As GENEEC is a conservative screening tool and the exposure estimates for both adults and children are well below 1% of the RfD, the Agency concludes that the potential for chronic dietary exposure through drinking water in insignificant.

3. *Non-dietary uses.* EPA has not estimated non-dietary exposure for pyridaben since there are no chronic or acute residential risks expected from the citrus, apple, pear and almond uses. The only other registered use is limited to commercial greenhouse for non-food ornamental plants. The potential for non-occupational exposure to the general population is, thus, not expected to be significant.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(V) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' While the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity in a meaningful way, EPA is commencing a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes the results of this pilot process will enable it to apply common mechanism issues to its pesticide risk assessments. At present, however, the Agency does not know how to apply the information in its files concerning common mechanism issues to risk assessments, and therefore believes that in most cases, there is no available information concerning mechanism that can be scientifically applied to tolerance decisions. Where it is clear that a particular pesticide may share a significant common mechanism with other chemicals, a tolerance decision may be affected by common mechanism issues. The Agency expects that most tolerance decisions will fall into the area in between, where EPA can not reasonably determine whether a pesticide does or does not share a common mechanism of toxicity with other chemicals (and, if so, how that common mechanism should be factored into a risk assessment). In such circumstances, the Agency will reach a tolerance decision based on the best, currently available and useable information, without regard to common mechanism issues. However, the Agency will also revisit such decisions when the Agency learns how to apply common mechanism information to pesticide risk assessments.

In the case of pyridaben, it is structurally similar to other members of the pyridazinone class of pesticides (i.e. pyrazon and norflurazon). However, since EPA has determined that it does not now have the capability to apply the information in its files to a resolution of common mechanism issues in a manner that would be useful in a risk assessment, this tolerance determination does not take into account common mechanism issues. The Agency will reexamine the tolerance for pyridaben, if reexamination is appropriate, after the Agency has determined how to apply common mechanism issues to its pesticide risk assessments.

IV. Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In either case, EPA generally defines the level of appreciable risk as exposure that is greater than 1/100 of the no observed effect level in the animal study appropriate to the particular risk assessment. This hundredfold uncertainty (safety) factor/margin of exposure (safety) is designed to account for combined inter-and intra-species variability. EPA believes that reliable data support using the standard hundredfold margin/factor not the additional tenfold margin/factor 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/factor.

In assessing the potential for risk to infants and children to residues of pyridaben, EPA considered data from oral developmental toxicity studies in the rat and rabbit, as well as data from

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 the mothers. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

Based on current data requirements, the database relative to pre-and post natal toxicity is complete. These data taken together suggest minimal concern for developmental or reproductive toxicity and do not indicate any increased pre- or post-natal sensitivity. Therefore, EPA concludes that reliable data support use of a hundredfold safety factor and an additional tenfold safety factor is not needed to protect the safety of infants and children. Therefore, no outstanding data requirements exist.

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

1. *Chronic dietary exposure/risk.* A chronic dietary exposure/risk assessment was performed for pyridaben using a RfD of 0.005 mg/kg/day. Using the exposure assumptions previously described, and based on the completeness and reliability of the toxicity data base, EPA has concluded that aggregate exposure to pyridaben from its us on apples, pears, citrus and almonds will utilize 11.8 percent of the RfD for the general population and 74% for non-nursing infants < 1 year old which is the most exposed subpopulation. 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 an appreciable risk to human health.

2. *Aggregate risks.* Based upon the available data and assumptions used for dietary and water exposure and risk estimates, the population group estimated to be the most highly exposed to pyridaben is non-nursing infants (< 1 year old), with a risk estimate from combined sources equaling 74 percent of the RfD. (Dietary exposure contributes 74% of the RfD and drinking water contributes less than 1% of the RfD). EPA therefore concludes that there is reasonable certainty that no harm will result to Consumers, including infants and children from aggregate exposure of pyridaben residues.

VI. Other Considerations

A. Endocrine Effects

No evidence of such effects were reported in the toxicology studies described above. There is no evidence at this time that pyridaben causes endocrine effects.

B. Metabolism in Plants and Animals

The metabolism of pyridaben in plants and animals is adequately understood for the purpose of this tolerance. There are no Codex maximum residue levels established for residues of pyridaben on the proposed commodities. There is a practical analytical method available for determination of residues of pyridaben. Adequate enforcement methodology (gas chromatography/electron capture detector) for plant and animal commodities is available to enforce the tolerances. As a condition of registration, EPA has requested that revisions and clarifications be made to the submitted methodology, and that the animal commodity method be improved. Once this method has been submitted, EPA will provide information on this method to FDA. In the interim, the analytical method is available to anyone who is interested in pesticide residue enforcement from: By mail, Calvin Furlow, Public Information and Records Integrity Branch, Information Resources and Services 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.

VII. Summary of Findings

Tolerances are time limited to allow for development and review of additional residue field trials, long term storage stability studies, and revised analytical enforcement methodology. The analysis for pyridaben using anticipated residue levels shows that the proposed uses will not cause exposure to exceed the levels at which EPA believes there is an appreciable risk. All population subgroups examined by EPA are exposed to pyridaben residues at levels below 100 percent of the RfD for chronic effects. Based on the information and data considered, EPA concludes that the proposed time-limited tolerances will be safe. Therefore the tolerances are established as set forth in this document.

VIII. Objections and Hearing Requests

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

Any person may, by July 15, 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 CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential

may be disclosed publicly by EPA without prior notice.

IX. Public Docket

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number [OPP–300492] (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 address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPP–300492]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

X. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, since this action does not impose any information collection requirements 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 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).

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

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

Dated: May 7, 1997.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180— [AMENDED]

1. In part 180:

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

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

b. By revising § 180.494 to read as follows:

§ 180.494 Pyridaben; tolerance for residues.

(a) *General.* Time limited tolerances are established for residues of the insecticide pyridaben [2-tert-butyl-5-(4-tert-butylbenzylthio)-4-chloropyridazin-3(2H)-one] on the following plants, and of the insecticide pyridaben and its metabolites (2-tert-butyl-5-[4-(1-carboxy-1-methylethyl)benzylthio]-4-chloropyridazin-3(2H)-one) and (2-tert-butyl-4-chloro-5-[4-(1,1-dimethyl-2-hydroxyethyl)benzylthio]-chloropyridazin-3(2H)-one) on animals, as indicated in the following table. The tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/Revocation Date
Almonds	0.05	5/31/2001
Almond hulls	4.0	do.
Apple	0.6	do.
Apple pomace, wet	1.0	do.
Cattle, fat	0.05	do.
Cattle, meat	0.05	do.
Cattle, meat by-products	0.05	do.
Citrus	0.5	do.
Citrus oil	10.0	do.
Citrus pulp, dried	1.5	do.
Goat, fat	0.05	do.
Goat, meat	0.05	do.
Goat, meat by-products	0.05	do.
Hog, fat	0.05	do.
Hog, meat	0.05	do.
Hog, meat by-products	0.05	do.
Horse, fat	0.05	do.
Horse, meat	0.05	do.
Horse, meat by-products	0.05	do.
Milk	0.01	do.
Pears	0.75	do.
Sheep, fat	0.05	do.
Sheep, meat	0.05	do.
Sheep, meat by-products	0.05	do.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations* [Reserved]

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

[FR Doc. 97–12912 Filed 5–15–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300489; FRL–5717–5]

RIN 2070–AB78

Propamocarb Hydrochloride; Pesticide Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of the fungicide propamocarb hydrochloride in or on the food commodities tomatoes, tomato puree, and tomato paste in connection with EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of propamocarb hydrochloride on

tomatoes in the states of California, Florida, Maryland, New Jersey, New York, Pennsylvania, and Virginia. The tolerances will expire and are revoked by EPA on May 15, 1999.

DATES: This regulation becomes effective May 16, 1997. Objections and requests for hearings must be received by EPA on or before July 15, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300489], 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–300489], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services 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–300489]. 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 (703) 308–8326, e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for residues of propamocarb hydrochloride on tomatoes at 0.5 parts per million (ppm), in tomato puree at 1.0 ppm, and in tomato paste at 3.0 ppm. These tolerances will expire and be revoked by EPA on May 15, 1999. After May 15, 1999, EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

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 FFDCA, 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* 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) 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 and in residential settings, 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. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemptions for Propamocarb hydrochloride on Tomatoes and FFDCA Tolerances

Recent failures to control late blight in tomatoes and potatoes with the registered fungicides, have been caused almost exclusively by immigrant strains of late blight (*Phytophthora infestans*), which are resistant to the control of choice, metalaxyl. Before the immigrant strains of late blight arrived, all of the strains in the United States were previously controlled by treatment with metalaxyl. Presently, there are no fungicides registered in the United States that will provide adequate control of the immigrant strains of late blight. After having reviewed their submissions, EPA concurs that emergency conditions exist for the states previously listed.

As part of its assessment of these specific exemptions, EPA assessed the potential risks presented by residues of propamocarb hydrochloride on tomatoes, in tomato puree, and in tomato paste. 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 will permit the marketing of tomatoes treated in accordance with the provisions of the section 18 emergency exemptions and the marketing of tomato puree and tomato paste containing residues resulting from the processing of treated tomatoes. 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 are revoked by EPA on May 15, 1999, under FFDCA section 408(l)(5), residues of propamocarb hydrochloride not in excess of the amount specified in these tolerances remaining in or on tomatoes, tomato puree and tomato paste after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, section 18 of FIFRA. 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 propamocarb hydrochloride meets EPA's registration requirements for use on tomatoes or whether permanent tolerances for this use would be appropriate. These tolerances do not serve as a basis for registration of propamocarb hydrochloride by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any states other than California, Florida, Maryland, New Jersey, New York, Pennsylvania and Virginia to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemptions for propamocarb hydrochloride, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

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

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 MOE 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, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). 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 this action.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by propamocarb hydrochloride are discussed below.

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

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

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

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

B. Aggregate Exposure

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). In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers including infants and children. There are no established U.S. tolerances for propamocarb hydrochloride, and there are no registered uses for propamocarb hydrochloride on food or feed crops in the United States.

1. *Acute exposure*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. Drinking water is also considered a component of the acute dietary exposure, however, EPA generally will not include residential or other non-dietary exposure as a component of the acute exposure assessment. Theoretically, it is also possible that a residential, or other non-dietary, exposure could be combined with the acute total dietary exposure from food and water. However, the Agency does not believe that aggregating multiple exposure to large amounts of pesticide residues in the residential environment via multiple products and routes for a 1 day exposure is a reasonably probable event. It is highly unlikely that, in 1 day, an individual would have multiple high-end exposures to the same pesticide by treating their house via crack and crevice application, swimming in a pool, and be maximally exposed in the food and water consumed. Additionally, the concept of an acute exposure as a single exposure does not allow for including post-application exposures, in which residues decline over a period of days after application. Therefore, the Agency believes that residential exposures are more appropriately included in the short-term exposure scenario. In conjunction with this Section 18 use, the acute dietary (food only) risk assessment used tolerance level residue values and assumed 100% crop treated for all commodities requiring tolerances, as did the time-limited tolerance established for the Section 18 exemption for potatoes.

2. *Chronic exposure*— i. *Dietary - food exposures*. For the purpose of assessing chronic dietary exposure from propamocarb hydrochloride, EPA assumed tolerance level residues and 100% of crop treated for the proposed use of propamocarb hydrochloride on tomatoes. These conservative assumptions result in overestimation of human dietary exposures. Secondary residues of propamocarb hydrochloride are not expected to transfer to animal commodities as a result of the proposed use.

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

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

iii. Non-dietary, non-occupational exposure—short and intermediate term exposure. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be background exposure level) plus indoor and outdoor residential exposure. Propamocarb hydrochloride is registered for uses, such as lawn and ornamentals, 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.

C. Cumulative Exposure to Substances with Common Mechanisms 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 propamocarb hydrochloride has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, propamocarb hydrochloride does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that propamocarb hydrochloride has a common mechanism of toxicity with other substances.

D. Determination of Safety for U.S. Population

1. *Acute risk.* The acute dietary MOE for females 13+ years old (accounts for both maternal and fetal exposure) is 8,333. This MOE calculation was based on the developmental NOEL of 150 mg/kg/day from the developmental toxicity study in rabbits. This risk assessment also assumed 100% crop treated with tolerance level residues on all treated crops consumed, resulting in a significant over-estimate of dietary exposure. The large acute dietary MOE calculated for females 13+ years old provides assurance that there is a reasonable certainty of no harm for both females 13+ and infants and children resulting from pre-natal exposure to propamocarb hydrochloride, even if an additional tenfold safety factor were applied.

2. *Short- and intermediate-term risk.* Propamocarb hydrochloride is registered for use on turf and ornamentals and EPA acknowledges that there may be short-, intermediate-, and long-term non-occupational exposure scenarios. OPP has identified a toxicity endpoint 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 these requests, 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.

3. *Chronic risk.* Using the conservative TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to propamocarb hydrochloride from food will utilize 3 percent of the RfD for the U.S. population. 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. Despite the potential for exposure to propamocarb hydrochloride in drinking water from non-dietary, non-occupational exposure, 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 propamocarb hydrochloride residues.

E. Determination of Safety for Infants and Children

In assessing the potential for additional sensitivity of infants and children to residues of propamocarb hydrochloride, 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.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

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

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

In the developmental toxicity study in rats, the developmental NOEL was 221 mg/kg/day and was below the maternal NOEL (740 mg/kg/day). The

developmental LOEL of 740 mg/kg/day was based on increased fetal death, and an increased incidence of minor skeletal anomalies (incomplete ossification of some vertebrae and sternebrae). The maternal NOEL was 740 mg/kg/day, based on increased maternal death, spastic gait and decreased body weight at the LOEL of 2,210 mg/kg/day. These findings indicate the possibility of increased prenatal sensitivity of fetuses to *in utero* exposure to propamocarb.

An additional uncertainty factor of 10x for infants and children is appropriate for propamocarb hydrochloride, based upon the lack of data to evaluate postnatal exposure (due to the inadequate reproduction study) and based upon the increased sensitivity to prenatal exposure (indicated by the rat developmental study NOELs). EPA has concluded that the percent of the RfD that will be utilized by chronic dietary (food) exposure to residues of propamocarb hydrochloride ranges from 2% for nursing infants (<1 year old) up to 8% for non-nursing infants (<1 year old). The uncertainty factor will not raise the percent of the RfD utilized above the level of concern (100%). Additionally, the RfD calculation assumes tolerance level residues for all commodities and is therefore an over-estimate of dietary risk. Refinement of the dietary risk assessment by using anticipated residue data would reduce dietary exposure. The addition of potential exposure from propamocarb hydrochloride residues in drinking water is not expected to result in an exposure which would exceed the RfD.

V. Other Considerations

The metabolism of propamocarb hydrochloride in tomatoes is adequately understood for the purposes of this tolerance. A CODEX MRL of 1 mg/kg has been established for residues of propamocarb per se in/on tomatoes. The use pattern used for determining the CODEX MRL differs from that in this section 18 exemption (maximum use rate overseas is 3.2 lbs active ingredient(ai)/acre per application, the maximum use rate in the United States is 0.9 lbs ai/acre). No Canadian or Mexican residue limits have been established. The residue of concern for the purposes of these tolerances is propamocarb hydrochloride.

The proposed enforcement method designated UPSR 22/91 (MRID No. 439840–04) submitted with petition 6F4707 is adequate to support the proposed time-limited tolerances. The method has been adequately radiovalidated for recovery of parent compound. The method is available to anyone who is interested in pesticide residue enforcement from: By mail, Calvin Furlow, Public Information and Records Integrity Branch, Information Resources and Services 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, tolerances in connection with the FIFRA section 18 emergency exemptions are established for residues of propamocarb hydrochloride in or on tomatoes at 0.5 parts per million (ppm), tomato puree at 1.0 ppm, and tomato paste at 3.0 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 July 15, 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

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number [OPP–300489] (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 address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPP–300489]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

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 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 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).

List of Subjects in 40 CFR Part 180

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

Dated: May 8, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.499 is amended as follows:

i. By redesignating the existing text as paragraph (b), revising the introductory text of newly designated paragraph (b), in the third column to the table by changing ''March 15, 1999'' to ''3/15/99'', and alphabetically adding entries for tomatoes; tomato paste and tomato puree.

ii. By correctly alphabetizing the entry for ''milk'' in the table.

iii. By adding and reserving paragraphs (a), (c), and (d).

§ 180.499 Propamocarb hydrochloride; tolerances for residues.

(a) *General.* [Reserved]

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

Commodity	Parts per million	Expiration/ Revocation Date
* *	*	* *
Tomatoes	0.5	May 15, 1999
Tomato, puree	1.0	May 15, 1999
Tomato, paste	3.0	May 15, 1999

(c) *Tolerance with regional registrations.* [Reserved]

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

[FR Doc. 97–12908 Filed 5–15–97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3800

[WO–660–4120–02–24 1A]

RIN 1004–AC40

Mining Claims Under the General Mining Laws; Surface Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule; correction.

SUMMARY: The Bureau of Land Management (BLM) published in the **Federal Register** of February 28, 1997, a final rule amending the bonding provisions of the regulations on mining on public lands under the Mining Law of 1872. The preamble of that final rule contained an editing error creating an internal contradiction in the preamble. This document corrects that error.

EFFECTIVE DATE: Effective on May 16, 1997.

ADDRESSES: Inquiries or suggestions should be sent to the Solid Minerals Group at Director (320), Bureau of Land Management, Room 501 LS, 1849 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Richard Deery, (202) 452–0350.

SUPPLEMENTARY INFORMATION: BLM published a final rule in the **Federal Register** of February 28, 1997 (62 FR 9093), amending the bonding provisions of the regulations on hardrock mining on public lands under the Mining Law of 1872 (30 U.S.C. 22 *et seq.*). In the preamble of the final rule, because of an editing error, the final two sentences in the last paragraph of the third column on page 9095 appear to contradict each other in explaining when operators working under an existing notice must provide a certification under the regulations. This document corrects that error.

In rule FR Doc. 97–5016, published on February 28, 1997 (62 FR 9093), make the following correction. On page 9095, in the last paragraph of the third column, revise the final sentence to read as follows: ''For existing notices on file with BLM under which operations have not yet begun, the claimant or operator will have to provide the certification before initiating operations.''

Dated: May 9, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–12822 Filed 5–15–97; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. MM 87–268; FCC 97–116]

Advanced Television Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Report and Order* amends the Commission's rules by adopting service rules to implement digital television. The intended effect of this action is to promote rapid conversion to and implementation of digital television. *This Report & Order* contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collections contained in this proceeding.

DATES: *Effective Dates:* The new rules are effective June 16, 1997. Written comments by the public on the new and/or modified information collections are due July 15, 1997.

ADDRESSES: In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Saul Shapiro, Mass Media Bureau, (202) 418–2600, Gretchen Rubin, Mass Media Bureau, Policy and Rules Division, (202) 418–2120; Mania K. Baghdadi, Mass Media Bureau, Policy and Rules Division, Legal Branch, (202) 418–2130; Dan Bring, Mass Media Bureau, Policy and Rules Division, Policy Analysis Branch, (202) 418–2170, or Gordon Godfrey, Mass Media Bureau, Policy and Rules Division, Engineering Policy Branch, (202) 418–2190. For additional information concerning the information collections contained in this *Report and Order* contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Fifth Report and Order* in MM Docket No. 87–268; FCC 97–116, adopted April 3, 1997 and released April 21, 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, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C., 20037, (202) 857–3800.

Synopsis of Report and Order

I. Introduction

1. Television has played a critical role in the United States in the second half of the twentieth century. A technological breakthrough—digital television—now offers the opportunity for broadcast television service to meet the competitive and other challenges of the twenty-first century.[1]

2. The Telecommunications Act of 1996 (''1996 Act'') provided that initial eligibility for any advanced television licenses issued by the Commission should be limited to existing broadcasters, conditioned on the eventual return of either the current 6 MHz channel or the new digital channel. Today we adopt rules to implement the statute. Our rules are designed to give digital television the greatest chance to meet its potential. We recognize the challenges that will be faced by broadcasters in adopting this new technology. Accordingly, we have generally refrained from regulation and have sought to maximize broadcasters' flexibility to provide a digital service to meet the audience's needs and desires. Where appropriate, however, we have adopted rules we believe will ensure a smooth transition to digital television for broadcasters and viewers. These rules include an aggressive but reasonable construction schedule, a requirement that broadcasters continue to provide a free, over-the-air television service, and a simulcasting requirement phased in at the end of the transition period. Further, we recognize that digital broadcasters remain public trustees with a responsibility to serve the public interest.

II. Issue Analysis

A. Goals

3. Digital technology holds great promise. It allows delivery of brilliant, high-definition, multiple digital-quality programs, and ancillary and supplementary services such as data transfer. In recent years, competition in the video programming market has dramatically intensified. Cable, Direct Broadcast Satellite (DBS), Local Multipoint Distribution System (LMDS), wireless cable, Open Video Systems (OVS) providers, and others vie, or will soon vie, with broadcast television for audience. Many operators in those services are poised to use digital. The viability of digital broadcast television will require millions of Americans to purchase digital television equipment. Because of the advantages to the American public of digital technology—both in terms of services and in terms of efficient spectrum management—our rules must strengthen, not hamper, the possibilities for broadcast DTV's success.

4. In the *Fourth Further Notice/Third Inquiry* (60 FR 42130, August 15, 1995), we outlined the goals of: ''(1) preserving a free, universal broadcasting service; (2) fostering an expeditious and orderly transition to digital technology that will allow the public to receive the benefits of digital television while taking account of consumer investment in NTSC television sets; (3) managing the spectrum to permit the recovery of contiguous blocks of spectrum, so as to promote spectrum efficiency and to allow the public the full benefit of its spectrum; and (4) ensuring that the spectrum—both ATV channels and recovered channels—will be used in a manner that best serves the public interest.'' In the context of the implementation of a DTV standard, we also enumerated the goals: ''(1) to ensure that all affected parties have sufficient confidence and certainty in order to promote the smooth introduction of a free and universally available digital broadcast television service; (2) to increase the availability of new products and service to consumers through the introduction of digital broadcasting; (3) to ensure that our rules encourage technological innovation and competition; and (4) to minimize regulation and assure that any regulations that we do adopt remain in effect no longer than necessary.'' These goals can be distilled into the two essential objectives that underlie the decisions we make today.

5. First, we wish to promote and preserve free, universally available, local broadcast television in a digital world. Only if DTV achieves broad acceptance can we be assured of the preservation of broadcast television's unique benefit: free, widely accessible programming that serves the public interest. DTV will also help ensure robust competition in the video market that will bring more choices at less cost to American consumers. Particularly given the intense competition in video programming, and the move by other video programming providers to adopt digital technology, it is desirable to encourage broadcasters to offer digital

[1] *This Fifth Report and Order* follows the adoption of a standard for the transmission of digital television. *Fourth Report and Order* (62 FR 14006, March 25, 1997) in MM Docket No. 87–268, 11 FCC Rcd 17771 (1996) (''*Fourth Report and Order*''). We have previously issued the following documents in this proceeding. *Notice of Inquiry* (52 FR 34259, September 10, 1987) in MM Docket No. 87–268, 2 FCC Rcd 5125, 5127 (1987) (''*First Inquiry*''); *Tentative Decision and Further Notice of Inquiry* in MM Docket No. 87–268, 3 FCC Rcd 6520 (1988) (''*Second Inquiry*''); *First Report and Order* (55 FR 39275, September 26, 1990) in MM Docket No. 87–268, 5 FCC Rcd 5627 (1990) (''*First Order*''); *Notice of Proposed Rule Making* (56 FR 58207, November 18, 1991) in MM Docket No. 87–268, 6 FCC Rcd 7024 (1991) (''*Notice*''); *Second Report and Order/Further Notice of Proposed Rule* Making in MM Docket No. 87–268, 7 FCC Rcd 3340 (1992) (''*Second Report/Further Notice*''); *Second Further Notice of Proposed Rule Making* (57 FR 38652, August 26, 1992) in MM Docket No. 87–268, 7 FCC Rcd 5376 (1992) (''*Second Further Notice*''); *Memorandum Opinion* and *Order/Third Report and Order/Third Further Notice of Proposed Rule Making* (57 FR 53588, November 12, 1992) in MM Docket No. 87–268, 7 FCC Rcd 6924 (1992) (''*Third Report/Further Notice*''); *Fourth Further Notice of Proposed Rule Making/Third Notice of Inquiry* (60 FR 42130, August 15, 1995) in MM Docket No. 87–268, 10 FCC Rcd 10541 (1995) (''*Fourth Further Notice/Third Inquiry*''); *Fifth Further Notice of Proposed Rule Making* (61 FR 26864, May 29, 1996) in MM Docket No. 87–268, 11 FCC Rcd 6235 (1996) (''*Fifth Further Notice*''); *Sixth Further Notice of Proposed Rule Making* (61 FR 43209, August 21, 1996) in MM Docket No. 87–268, 11 FCC Rcd 10968 (1996) (''*Sixth Further Notice*''). We note that we also adopt today the *Sixth Report and Order,* MM Docket No. 87–268, FCC 97–115, released April 21, 1997 (''*Sixth Report and Order*'').

television as soon as possible. We make decisions today designed to promote the viability of digital television services. Digital broadcasters must be permitted the freedom to succeed in a competitive market, and by doing so, attract consumers to digital. In addition, broadcasters' ability to adapt their services to meet consumer demand will be critical to a successful initiation of DTV.

6. Second, we wish to promote spectrum efficiency and rapid recovery of spectrum. Decisions that promote the success of digital television—our first goal—promote this goal as well. The more quickly that broadcasters and consumers move to digital, the more rapidly spectrum can be recovered and then be reallocated or reassigned, or both. The faster broadcasters roll out digital television, the earlier we can recover spectrum.

7. Our decisions today further these goals. They ensure that broadcasters have more flexibility in their business. Broadcasters will be able to experiment with innovative offerings and different service packages as they continue to provide at least one free program service and meet their public-interest obligations. We choose to impose few restrictions on broadcasters and to allow them to make decisions that will further their ability to respond to the marketplace. We leave to broadcasters' business judgment such decisions as whether to provide high definition television or whether, initially, to simulcast the NTSC stream on DTV, and what and how many ancillary and supplementary services to provide. To aid the launch of digital services, we provide for a rapid construction of digital facilities by network-affiliated stations in the top markets, in order to expose a significant number of households, as early as possible, to the benefits of DTV. We require those most able to bear the risks of introducing digital television to proceed most quickly. Our decisions here will foster the swift development of DTV, which should enable us to meet our target of ending NTSC service by 2006. To permit careful monitoring of the development of digital television and an opportunity to reassess the decisions we make today, we intend to conduct a review of DTV every two years until the cessation of NTSC service.

B. Channel Bandwidth

8. *Background.* In the *Fourth Further Notice/Third Inquiry,* (60 FR 42130, August 15, 1995), we noted that we had previously decided that DTV would be introduced by assigning existing broadcasters a temporary channel on which to operate a DTV station during the transition period.[2] We also noted that the DTV transmission system was designed for a 6 MHz channel and added that ''we continue to believe that providing 6 MHz channels for ATV purposes represents the optimum balance of broadcast needs and spectrum efficiency.'' [3] Nonetheless, we invited comment on any means of achieving greater spectrum efficiency, and, in this section, we will discuss whether 6 MHz channels should be allotted.

9. *Comments.* All broadcasters filing comments support affording a second 6 MHz channel per broadcaster for DTV. Joint Broadcasters, for example, state that the entire 6 MHz is required; assigning less would deprive the public of HDTV and set back the transition, because the Grand Alliance system presupposes 6 MHz channels, and anything different would require an entirely new design and testing program. Additionally, equipment manufacturers generally support the provision of 6 MHz channels for DTV purposes, noting that 6 MHz of spectrum is required for HDTV broadcasts.

10. However, Media Access Project, et al. (''MAP'') argues that the Commission should provide broadcasters only enough spectrum to provide one ''free'' digital program service, either by allocating less than 6 MHz channels to broadcasters, by allocating the spectrum to others and only affording broadcasters ''must carry'' rights; or by allocating the spectrum to broadcasters but requiring them to lease out excess capacity to unaffiliated programmers. Further, Home Box Office (''HBO'') asserts that if the Commission determines that the public interest demands Standard Definition Television (''SDTV'') or other auxiliary applications, it must take another look at whether an entire 6 MHz slice of new spectrum should go to incumbent broadcasters.

11. *Decision.* We invited comment in the *Fourth Further Notice/Third Inquiry* (60 FR 42130, August 15, 1995) on any means of achieving greater spectrum efficiency. Based on the comments, we continue to believe that providing 6 MHz channels for DTV purposes ''represents the optimum balance of broadcast needs and spectrum efficiency.'' We do not believe that greater spectrum efficiency can be achieved by adopting a different channel size. Indeed, use of 6 MHz channels would facilitate spectrum efficiency because making the DTV channel the same width as the analog channel will afford greater flexibility at the end of the transition in terms of the choice of channel the broadcaster retains for DTV purposes.

12. Moreover, contrary to those comments that disagreed with allotting 6 MHz channels for DTV, we believe that the use of 6 MHz channels is necessary to provide viewers and consumers the full benefits of digital television made possible by the DTV Standard, including high definition television (''HDTV''), standard definition television, and other digital services. The DTV Standard was premised on the use of 6 MHz channels. To specify a different channel size at this late date would not promote our goals in adopting the DTV Standard and would prolong the conversion to DTV. Specifically, we believe that failing to specify a 6 MHz channel would undermine our goals, expressed in the *Fourth Report and Order* (62 FR 14006, March 25, 1997), of fostering an expeditious and orderly transition to digital technology and managing the spectrum to permit the recovery of contiguous blocks of spectrum and promote spectrum efficiency. The conversion to DTV would undoubtedly be significantly delayed if we set aside the longstanding expectations of the parties, on which they have based the technology and established their plans, and specified a different channel bandwidth. Accordingly, we reaffirm our earlier judgment and will allot 6 MHz channels for DTV.

C. Eligibility

13. *Background.* We proposed to limit initial eligibility for DTV channels to existing broadcasters. Our proposed criteria for existing broadcasters included full-service television broadcast station licensees, permittees authorized as of October 24, 1991, and parties with applications for a construction permit on file as of October 24, 1991, who are ultimately awarded a full-service broadcast license. After release of the *Fourth Further Notice/ Third Inquiry* (60 FR 42130, August 15, 1995), Congress statutorily addressed eligibility in the 1996 Act. Congress instructed the Commission to limit the initial eligibility for advanced television licenses to persons that, as of the date

[2] *Fourth Further Notice/Third Inquiry,* (60 FR 42130, August 15, 1995) supra at 10543. We decided to continue use of the 6 MHz channel early in this proceeding. *Third Report/Further Notice* (57 FR 53588, November 12, 1992), supra at 6926; see also *First Order,* supra at 5627–29.

[3] *Fourth Further Notice/Third Inquiry* (60 FR 42130, August 15, 1995), *supra at* 10543. Indeed, the DTV Standard subsequently adopted in the *Fourth Report and Order* (62 FR 14006, March 25, 1997) (''DTV Standard'') is predicated upon the use of a 6 MHz channel.

of the issuance of the licenses, are licensed to operate a television broadcast station or hold a permit to construct such a station. The 1996 Act did not change the fact that the Commission lacks statutory authority to auction broadcast spectrum.

14. *Comments.* We sought comment on the potential impact of the eligibility restriction on the Commission's policy of fostering programming and ownership diversity. Few commenters address this topic. However, some commenters address the basic issue of the eligibility restriction. For example, some argue that allowing broadcasters to offer subscription services without opening up that opportunity to competitors would violate the legal principles enunciated in *Ashbacker Radio Corporation* v. *FCC,* 326 U.S. 327 (1945), discussed below. Others maintain that the Commission faces an *Ashbacker* problem unless it mandates that broadcasters provide HDTV. General Instrument argues that ''allowing existing broadcasters too much ''flexible use' of the 6 MHz ATV allocation raises the *Ashbacker* problem by changing the primary service provided rather than merely modifying existing licenses,'' but that the Commission could avoid *Ashbacker* problems by requiring that the predominant use of the DTV spectrum be for HDTV transmission. HBO argues that if we were to allow the DTV channel to be put to uses other than HDTV, for which broadcasters have no more established interest or expertise than potential competing applicants, the public interest rationale for granting the spectrum to incumbents without a competitive process would evaporate.

15. Another eligibility issue raised by commenters concerns the restriction of initial eligibility to full-service licensees. LPTV commenters such as Abacus Television point out the contribution that LPTV stations make in providing television service to underserved areas as well as the local and specialized nature of the services they provide. These comments also contend that the Commission has long found that diversification of mass media ownership serves the public interest by promoting diversity of program and service viewpoints and by preventing undue concentration of economic power. According to Abacus Television, excluding LPTV from the analog to digital transition would undermine these principles. Further, Abacus argues, it would exclude the vast majority of minority television licensees and permittees and is antithetical to increasing ownership diversity. Abacus argues that the Commission should perform a market-by-market analysis to determine which LPTV stations could be accommodated; absent that, it could minimize the effect on LPTV stations by adding a second phase to the process of creating a Table of Allotments to address the accommodation of LPTV service next, after it has begun the conversion process for full power television licensees. It offers suggestions on how to carry out this phase. WatchTV, Inc. also argues that the Commission should make unused digital channels available to existing low power operators on the same terms and conditions as it may adopt for small market broadcasters and educational licensees before it allows new entrants to apply. Additionally, White Eagle Partners believes that LPTV stations should be eligible to receive 6 MHz DTV channels.

16. Still other LPTV commenters argue that neither LPTV stations nor full service stations should be afforded a second 6 MHz channel. Community Broadcasters Association (''CBA'') believes that a dual channel DTV scenario would be an inefficient use of spectrum, requiring not only immense private investment, but also leading to a host of logistical and other problems that will negate many of the benefits of DTV. CBA argues that full power and LPTV stations should be permitted to convert to DTV on their present channel at any time.

17. *Decision.* In the 1996 Act, Congress specifically addressed the eligibility issue. Congress provided that the Commission ''should limit the initial eligibility for [DTV] licenses to persons that, as of the date of such issuance, are licensed to operate a television broadcast station or hold a permit to construct a station (or both) * * *.'' In comments filed before passage of the 1996 Act, some parties argue that granting incumbent broadcasters the exclusive right to apply for the DTV spectrum raises potential problems under *Ashbacker Radio Corporation* v. *FCC,* 326 U.S. 327 (1945), and its progeny. Other commenters argue similarly that *Ashbacker* concerns are raised unless the Commission imposes an HDTV mandate. However, given Congress' explicit direction, there is now no statutory basis to question the Commission's authority to limit initial eligibility to existing broadcasters. Following Congress' direction, we determine that initial eligibility should be limited to those broadcasters who, as of the date of issuance of the initial licenses, hold a license to operate a television broadcast station or a permit to construct such a station, or both.[4]

18. We will continue our previously adopted policy to limit initial eligibility for DTV licenses to existing full-power broadcasters. We previously determined that there is insufficient spectrum to include LPTV stations and translators, which are secondary under our rules and policies, to be initially eligible for a DTV channel. As we noted in the *Sixth Further Notice* (61 FR 43209), in order to provide DTV allotments for existing full service stations, it will be necessary to displace LPTV stations and TV translator stations to some degree, especially in major markets. We have not been able to find a means of resolving this problem. However, we note that limiting initial eligibility to full-power broadcasters does not necessarily exclude LPTV stations from the conversion to digital television. Moreover, in the *Sixth Further Notice* (61 FR 43209), we made a number of proposals to mitigate the impact on LPTV stations, and, in the *Sixth Report and Order,* we adopt a number of measures intended to minimize the impact of DTV implementation on LPTV service.

D. Definition of Service

1. Spectrum Use

19. *Background.* The *Fourth Further Notice/Third Inquiry* (60 FR 42130, August 15, 1995) reaffirmed our intention to preserve and promote universal, free, over-the-air television. We recognized that broadcast television has become an important part of American life and thus stated ''we envision that the 6 MHz channel earmarked for [DTV] will be used for free, over-the-air broadcasting.'' We also recognized the increased flexibility that DTV offered broadcasters and noted that ''allowing at least some level of flexibility would increase the ability of broadcasters to compete in an increasingly competitive marketplace, and would allow them to serve the public with new and innovative services.''

20. The DTV Standard, adopted by the Commission in the *Fourth Report and*

[4] Our eligibility criteria are consistent with the provisions of section 336 of the 1996 Act. 47 U.S.C. § 336. We have made the initial assignment of channels in the accompanying *Sixth Report and Order* and adopted criteria for the allotment of additional DTV channels. We will give particular consideration for assigning temporary DTV channels to new licensees who applied on or before October 24, 1991, given the reliance that these parties may have placed on rules we adopted before passage of the 1996 Act. *Second Report/Further Notice* (57 FR 21755, May 22, 1992), supra, at 3343, clarified, *Third Report/Further Notice* (57 FR 53588, November 12, 1992), supra at 6932–33.

Order (62 FR 14006, March 25, 1997), permits broadcasters to offer a variety of services. It allows broadcasters to offer free television of higher resolution than analog technology. It allows the broadcast of at least one, and under some circumstances two, high definition television programs; and it allows ''multicasting,'' the simultaneous transmission of three, four, five, or more digital programs. The Standard also allows for the broadcast of CD-quality audio signals. And it permits the rapid delivery of large amounts of data: an entire edition of the local newspaper in less than two seconds, sports information, computer software, telephone directories, stock market updates, interactive educational materials and, indeed, any information that can be translated into digital bits. In addition to allowing broadcasters to transmit video, voice, and data simultaneously, the DTV Standard allows broadcasters to do so dynamically, meaning that they can switch back and forth quickly and easily. For example, a broadcaster could transmit a news program consisting of four separate SDTV programs for local news, national news, weather and sports; while interrupting that programming with a single high definition television commercial with embedded data about the product; or transmit a motion picture in a high definition format, while simultaneously using the excess capacity for transmission of data unrelated to the movie.

21. In light of the flexibility and new capabilities of digital television, we asked to what extent we should permit broadcasters to use their DTV spectrum for uses other than free, over-the-air television. Recognizing that broadcasters are currently allowed to use a portion of their broadcast spectrum for ancillary or supplementary uses that do not interfere with the primary broadcast signal, we asked whether we should permit such uses of the DTV spectrum, and, if so, how such uses should be defined and what portion of the DTV system's capacity should be allowed for such ancillary and supplementary services. Assuming we permitted ancillary and supplementary services, we also asked to what extent we should allow broadcasters to use DTV spectrum for services that go beyond traditional broadcast television or ancillary and supplementary uses analogous to those allowed under the current regulatory structure. We also asked whether broadcasters should be permitted to provide nonbroadcast and/or subscription services, and, if permitted, how such services should be defined, how much of the DTV capacity should be allowed for such uses, and what, if any, regulation would be appropriate for such services.

22. *Comments.* Most commenters support affording flexibility to broadcasters to provide ancillary and supplementary services. Joint Broadcasters favor the provision of any ancillary and supplementary services other than those limited by the Telecommunications legislation then pending. Viacom urges that DTV licensees should be authorized to explore the full potential of the ATSC DTV system as long as those uses do not adversely affect the broadcaster's free video service. AAPTS/PBS favors ancillary broadcast and nonbroadcast use of the DTV channel, noting that flexible use will serve the public interest by helping to spur development of new technologies and to provide greater opportunities for noncommercial stations to enhance their public service to their respective communities. A noncommercial station could, for example, utilize digital transmission to distribute program-related course materials, textbooks, student and teacher guides, computer software and content areas of the World Wide Web as part of the station's instructional programming. Further, noncommercial stations could use ancillary and supplementary services, without regard to the educational content, as a revenue source to support nonprofit services and operations and the transition to DTV.

23. Microsoft argues that licensees should be given maximum flexibility to provide a wide variety of services and any definition of free over-the-air broadcasting should be narrowly defined in the DTV environment. Texas Instruments, Inc. (''Texas Instruments'') argues that it is premature for the Commission to regulate the mix of DTV services by requiring a certain amount of capacity to be used for video programming; freedom from regulatory restraints will enhance television's functionality and appeal beyond entertainment to encompass new and unforeseen services.

24. Equipment manufacturers such as General Instrument, Motorola, Thomson, and Zenith, and EIA urge that the Commission should permit flexible use of the DTV channel consistent with the preservation of free over-the-air television and as long as there is a substantial commitment to HDTV. Motorola, however, supports a more restrictive definition of ancillary services. The Digital Grand Alliance states that, while the predominant use should be for free over-the-air television and a minimum number of HDTV hours should be broadcast, the Commission should permit flexible uses of the DTV channel. Cohen, Dippell and Everist argues that a broadcaster should be permitted to provide new and innovative services that do not cause objectionable interference to existing users, provided that the primary use is broadcasting to the general public.

25. NYNEX and Personal Communications Industry Association (''PCIA'') urge that the primary use of the DTV channel should be free over-the-air broadcasting. NYNEX urges that allowing broadcasters to provide nonbroadcast and subscription services would threaten free, universal broadcasting and should be permitted only as a residual use of spectrum capacity. PCIA urges that a DTV licensee should be permitted to offer broadcast-related services, such as closed captioning, pay programming, broadcast or narrowcast audio service, and home shopping, but should not be allowed to offer mobile radio services like paging without open competition for DTV licenses by all qualified applicants. Golden Orange suggests that the Commission should permit all types of broadcast ancillary services that do not cause interference to the primary HDTV requirement it urges the Commission to adopt, but that the Commission should not permit nonbroadcast services or non-TV subscription services. HBO argues that the second channel should be used for HDTV and opposes affording broadcasters flexible use of the channel, but adds that if the Commission permits flexibility in the use of the channel, it should nonetheless require that a substantial portion of the day be devoted to HDTV programming. The Benton Foundation opposes spectrum flexibility as affording broadcasters an unfair competitive advantage over competitors and argues that the principal use of the second channel, defined as a minimum of 75% of capacity, should be for broadcast.

26. Broadcasters, as a group, express their staunch support for the continuation of our tradition of universal and free broadcast television. For example, the comments of the Joint Broadcasters, a group constituting a wide cross-section of broadcast television stations and networks, emphasize broadcasters' commitment to provision of free television service. ALTV, Pacific FM, and Busse argue that broadcasters should be required to offer at least one free over-the-air channel enhanced by digital technology but should otherwise be unfettered as to the

services they provide. MAP and the Benton Foundation argue that because broadcasters will receive free and exclusive use of the broadcast spectrum, free, over-the-air broadcasting should comprise no less than 75% of a broadcaster's capacity.

27. *Decision.* As we have noted before, an overarching goal of this proceeding is to promote the success of a *free,* local television service using digital technology. Broadcast television's universal availability, appeal, and the programs it provides—for example, entertainment, sports, local and national news, election results, weather advisories, access for candidates and public interest programming such as education television for children—have made broadcast television a vital service. It is a service available free of charge to anyone who owns a television set, currently 98% of the population.

28. We expect that the fundamental use of the 6 MHz DTV license will be for the provision of free over-the-air television service. In order to ease the transition from our current analog broadcasting system to a digital system, we will require broadcasters to provide on their digital channel the free over-the-air television service on which the public has come to rely. Specifically, broadcasters must provide a free digital video programming service the resolution of which is comparable to or better than that of today's service and aired during the same time periods that their analog channel is broadcasting. [5]

29. We wish to preserve for viewers the public good of free television that is widely available today. At the same time, we recognize the benefit of permitting broadcasters the opportunity to develop additional revenue streams from innovative digital services. This will help broadcast television to remain a strong presence in the video programming market that will, in turn, help support a free programming service. Thus, we will allow broadcasters flexibility to respond to the demands of their audience by providing ancillary and supplementary services that do not derogate the mandated free, over-the-air program service. Ancillary and supplementary services could include, but are not limited to, subscription television programming, computer software distribution, data transmissions, teletext, interactive services, audio signals, and any other services that do not interfere with the required free service.

30. This decision is supported by the overwhelming weight of the record. Consistent with precedent that has treated telecommunications services provided by an NTSC station other than the regular television program service as ancillary, we will consider as ancillary and supplementary any service provided on the digital channel other than free, over-the-air services. In addition, we will not impose a requirement that the ancillary and supplementary services provided by the broadcaster must be broadcast-related.

31. The approach we take here, of allowing broadcasters flexibility to provide ancillary and supplementary services is supported both generally and specifically by the 1996 Act, enacted after issuance of the *Fourth Further Notice/Third Inquiry* (60 FR 42130, August 15, 1995). In general, the 1996 Act seeks ''[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.'' More importantly, the 1996 Act specifically gives the Commission discretion to determine, in the public interest, whether to permit broadcasters to offer such services. section 336(a)(2) of the Communications Act, contained in section 201 of the 1996 Act, provides that if the Commission issues additional licenses for advanced television services, it ''shall adopt regulations that allow the holders of such licenses to offer such ancillary or supplementary services on designated frequencies as may be consistent with the public interest, convenience, and necessity.''

32. Section 336(b)(2) sets out the specific parameters of our authority to permit ancillary and supplementary services, [6] and the approach we take here fully complies with those parameters. Thus, under section 336(b)(2), the Commission is required to limit ancillary and supplementary services to avoid derogation of any advanced television services that the Commission may require. The Commission has exercised its discretion and is requiring broadcasters to continue to provide the free over-the-air service on which the public has come to rely. We herein require that any ancillary and supplementary services broadcasters provide will not derogate that required service. Further, section 336(b)(1) requires that the Commission may only permit broadcasters to offer ancillary or supplementary services ''if the use of a designated frequency for such services is consistent with the technology or method designated by the Commission for the provision of advanced television services* * *.''

33. Moreover, we believe that the approach we take here will serve the public interest by fostering the growth of innovative services to the public and by permitting the full possibilities of the DTV system to be realized. One of our goals is to promote spectrum efficiency. Encouraging an expeditious transition from analog to digital television and a quick recovery of spectrum will promote that goal. By permitting broadcasters to assemble packages of services that consumers desire, we will promote the swift acceptance of DTV and the penetration of DTV receivers and converters. That, in turn, will help promote the success of the free television service. As discussed above, digital television promises a wealth of possibilities in terms of the kinds and numbers of enhanced services that could be provided to the public. Indeed, we believe that giving broadcasters flexibility to offer whatever ancillary and supplementary services they choose may help them attract consumers to the service, which will, in turn, hasten the transition. In addition, the flexibility we authorize should encourage entrepreneurship and innovation. For example, it may encourage the development of compression technologies that could allow even more digital capacity on a 6 MHz channel, paving the way for multiple high definition programs and more free

[5] For example, a broadcaster who provides programming on its analog channel from 6:00 am until midnight must provide a free over-the-air digital signal during those hours.

[6] Section 336(b) of the Communications Act, also added by section 201 of the 1996 Act, provides that in prescribing the regulations required by Section 336(a), the Commission shall:

(1) only permit such licensee or permittee to offer ancillary or supplementary services if the use of a designated frequency for such services is consistent with the technology or method designated by the Commission for the provision of advanced television services;

(2) limit the broadcasting of ancillary or supplementary services on designated frequencies so as to avoid derogation of any advanced television services, including high definition television broadcasts, that the Commission may require using such frequencies;

(3) apply to any other ancillary or supplementary service such of the Commission's regulations as are applicable to the offering of analogous services by any other person, except that no ancillary or supplementary service shall have any rights to carriage under section 614 or 615 or be deemed to be a multichannel video programming distributor for purposes of section 628;

(4) adopt such technical or other requirements as may be necessary or appropriate to assure the quality of the signal used to provide advanced television services, and may adopt regulations that stipulate the minimum number of hours per day that such signal must be transmitted; and

(5) prescribe such other regulations as may be necessary for the protection of the public interest, convenience, and necessity.

(6) 47 U.S.C. § 336(b).

programming than would otherwise be offered.

34. There is no public interest harm in permitting ancillary and supplementary services; indeed, to the contrary, allowing such services contributes to efficient spectrum use and can expand and enhance use of existing spectrum. In this case, technological advancements, *i.e.*, digital technology, have made it possible for broadcasters to provide continuing free, over-the-air service and still have the capacity to provide other innovative services. It would be contrary to the public interest to handicap broadcasters in providing these services and to deprive consumers of the opportunity to purchase the services they desire. We note, however, that we will review our flexible approach to permitted ancillary and supplementary services during the periodic reviews established herein and make adjustments to our rules as needed.

35. We note that the 1996 Act requires the Commission to establish a fee program for ancillary or supplementary services provided by digital licensees if subscription fees are required in order to receive such services or if the licensee directly or indirectly receives compensation from a third party in return for transmitting material furnished by such third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required). We will issue a Notice to consider proposals as to how that statutory provision should be implemented.

36. In addition, consistent with the 1996 Act, non-broadcast services provided by digital licensees will be regulated in a manner consistent with analogous services provided by other persons or entities. We already follow such an approach with respect to ancillary and supplementary services provided by NTSC licensees, for example, on the VBI and the video portion of the analog signal.

2. High Definition

37. *Background.* In the *Fourth Further Notice/Third Inquiry* (60 FR 42130, August 15, 1995), the Commission noted that the Grand Alliance system would provide broadcasters new flexibility and new capabilities to provide not only high definition television but also multiple program streams, as well as a variety of nonvideo and/or subscription-based services. After noting that allowing at least some level of flexibility would increase the ability of broadcasters to compete in an increasingly competitive marketplace, would permit new and innovative services to be provided to the public, and would allow for a more rapid transition to digital broadcasting, the Commission requested comment as to whether it should require broadcasters to provide a minimum amount of high definition television and, if so, what minimum amount should be required.

Comments. Many commenters are opposed to a minimum HDTV requirement. Commenters urging the Commission not to apply a minimum HDTV requirement but rather to leave that determination to the marketplace and thus to broadcasters and viewers include the National Association of Broadcasters (''NAB''), ALTV, the Benton Foundation, Microsoft Corporation, Telemundo Group, Inc. (''Telemundo''), and AAPTS/PBS. NAB notes that mandating a certain amount of HDTV could impair broadcasters' ability rapidly to fuel development of the DTV market with complementary program offerings and could prolong the transition to digital television. NAB states: ''By providing maximum latitude, the Commission will encourage development of diverse new programming services that will facilitate the most rapid acceptance of ATV and lead to the most rapid return of NTSC spectrum.'' ALTV states that a minimum HDTV requirement would be burdensome and, moreover, superfluous because the broadcast industry has maintained its commitment to implement HDTV. According to ALTV, independent stations rely on syndicated and local programming, which is less likely to be produced in an HDTV format, so a minimum HDTV requirement would have a disproportionately burdensome impact on independents. ALTV states that any minimum HDTV requirement, if and when justified by future circumstances, should be adopted later in the transition, as more HDTV programming comes on the market. Telemundo notes that a minimum HDTV requirement would negatively impact foreign language stations and networks, many of which feature programming produced outside the United States, where HDTV production is likely to lag domestic HDTV production. AAPTS and PBS, in joint comments, oppose a minimum HDTV requirement, noting that the Commission can rely on broadcasters and public television's commitment to HDTV, and argue that if the Commission adopts an HDTV requirement, it should be ''liberally waived'' for noncommercial stations (particularly those analog stations that may share a DTV channel in the transition). The Benton Foundation argues that mandating an HDTV minimum serves no public interest because it does not increase the number of voices in the marketplace or contribute to the civic discourse of democracy.

39. Support for a minimum HDTV requirement is expressed by three networks, HBO, NYNEX Corporation, receiver manufacturers, Viacom, Golden Orange Broadcasting Co., Inc. (''Golden Orange''), and the National Consumers League. Supporters of a minimum requirement generally argue that a requirement will help promote the early availability of HDTV programming, create demand for HDTV receivers, stimulate the market, and speed the transition. Golden Orange, for example, notes that without HDTV, the public will not be motivated to buy receivers. HBO argues that the legal and policy principles that justify awarding incumbent broadcasters a second channel for DTV do not permit broadcasters to use this second channel for any thing other than HDTV programming, and, if the FCC allows other than HDTV programming, it should require that a substantial portion of the broadcast day, especially during dayparts and prime time, be devoted exclusively to HDTV. These commenters vary on the amount of HDTV programming that should be required and on how the minimum should be implemented.

40. While believing that the marketplace is the best determinant of the optimum balance between HDTV and other DTV services, Joint Broadcasters support a minimum HDTV requirement if necessary to assure HDTV a fair chance in the marketplace. Joint Broadcasters also declare their support for HDTV as the ''centerpiece'' of the digital television system and note the commitment of many broadcast organizations to provide HDTV. MAP, which supports allotting only enough capacity to broadcasters to provide one free, over-the-air, digital program service, argues accordingly that there is little reason for the Commission to mandate HDTV. However, MAP notes that the only justification for affording broadcasters exclusive use of the entire 6 MHz of spectrum is that they will deliver significant amounts of HDTV programming.

41. *Decision.* Our decisions today, and our previous adoption of the DTV Standard, give broadcasters the opportunity to provide high definition television programming, but we decline to impose a requirement that broadcasters provide a minimum amount of such programming and, instead, leave this decision to the discretion of licensees. The DTV

Standard will allow broadcasters to offer the public high definition television, as well as a broad variety of other innovative services. We believe that we should allow broadcasters the freedom to innovate and respond to the marketplace in developing the mix of services they will offer the public. In this regard, we endeavor to carry out the premises of the 1996 Act which, as noted above, seeks ''[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.'' There is no reason to involve the government in a decision that should properly be based on marketplace demand. The 1996 Act specifically affords the Commission discretion whether or not to require minimum high resolution television programming.[7]

42. Our decisions to adopt the DTV Standard and to use 6 MHz channels permit broadcasters to provide high definition television in response to viewer demand. If we do not mandate a minimum amount of high resolution television, we anticipate that stations may take a variety of paths: some may transmit all or mostly high resolution television programming, others a smaller amount of high resolution television, and yet others may present no HDTV, only SDTV, or SDTV and other services. We do not know what consumers may demand and support. Since broadcasters have incentives to discover the preferences of consumers and adapt their service offerings accordingly, we believe it is prudent to leave the choice up to broadcasters so that they may respond to the demands of the marketplace. A requirement now could stifle innovation as it would rest on *a priori* assumptions as to what services viewers would prefer. Broadcasters can best stimulate consumers' interest in digital services if able to offer the most attractive programs, whatever form those may take, and it is by attracting consumers to digital, away from analog, that the spectrum can be freed for additional uses. Further, allowing broadcasters flexibility as to the services they provide will allow them to offer a mix of services that can promote increased consumer acceptance of digital television, which, in turn, will increase broadcasters' profits, which, in turn, will increase incentives to proceed faster with the transition.

[7] 47 U.S.C. 336(b)(2), adopted by section 201 of the 1996 Act.

43. We have also been persuaded by the arguments that a minimum high definition television requirement would be burdensome on some broadcasters. We note the arguments of ALTV and Telemundo as to the difficulties a minimum high resolution television requirement might impose on independent stations and foreign language stations, respectively. We acknowledge the contributions of such stations and the programming they provide to the diversity of our broadcast television service and hesitate to impose a requirement that might make it more difficult for such stations to convert to digital television, perhaps even undermining their ability to do so. We are not convinced that high definition television programming should be mandated where to mandate it might impose significant burdens on stations, particularly where, as will be discussed below, it appears that the marketplace will provide high definition television programming even absent a governmental requirement to that effect.

44. We note that some commenters argued that a high definition television mandate is necessary to give program producers and equipment manufacturers the necessary incentives to support high resolution television, and to provide viewers and consumers enough high resolution television programming to foster demand for such programming and to drive DTV receiver purchases. To the contrary, however, we believe that a minimum high definition television requirement is unnecessary to achieve these goals. We note in this regard that broadcasters and networks have emphasized their commitment to high definition television. We find nothing in the record that identifies a market failure or other reason to impose a governmental requirement for high definition television. High definition television will afford broadcasters an important tool in the increasingly competitive video programming market. There is no reason to believe that a government mandate is necessary to ensure that high definition television gets a fair chance in the marketplace.

E. Public Interest Obligations

45. *Background.* As we stated in the *Fourth Further Notice* (60 FR 42130, August 15, 1995), the rules imposing public interest obligations on broadcast licensees originate in the statutory mandate that broadcasters serve the ''public interest, convenience, and necessity,'' as well as other provisions of the Communications Act. These obligations include the requirements that broadcasters must provide ''reasonable access'' to candidates for federal elective office and must afford ''equal opportunities'' to candidates for any public office and that weekly they must provide three hours of children's educational programming. Licensees must also adhere to restrictions on the airing of indecent programming and must comply with the 1996 Act provisions relating to the rating of video programming. In the *Fourth Further Notice/Third Inquiry*, the Commission noted that these current public interest rules were developed under the analog model and therefore were shaped by the limitations inherent in analog technology. The Commission sought comment on whether the greater capabilities afforded by digital technology should affect licensees' obligations to serve the public interest, and if so, how those obligations might be adapted to the digital context.

46. *Comments.* Commenters generally agree that existing public interest obligations should continue to apply, at the very least, to free, over-the-air programming on DTV. They differ greatly, however, on whether, and if so, how, the public interest obligation should be applied and possibly expanded in a DTV world. Joint Broadcasters argue that public interest obligations should continue to apply to NTSC through the transition, and to all the DTV services, but that there is no need to impose additional obligations on the transition channel. ALTV comments that on DTV, free broadcast television service should continue to be subject to the public interest obligations now applied to NTSC, but that no public interest obligations should apply to nonbroadcast services. General Instrument argues that public-interest obligations should attach to free, over-the-air broadcasting on DTV, but that for provision of subscription services, broadcasters should be required to pay a fee to compensate the public.

47. Some commenters offered specific proposals on how the broadcasters' public-interest obligations could be reconceptualized and adapted in light of the new possibilities offered by digital technology. MAP argues that public interest obligations should apply to each program service, including subscription services, provided over DTV spectrum. MAP proposes that broadcasters be required to provide ''new and different public service in exchange for the opportunity to convert to digital television, including free time for political candidates, noncommercial public access, and dedication of 20% of total program time to children's educational and informational programming.'' Alliance for Community Media suggests that, at a minimum,

public interest guidelines should contain a quantitative measure of programming including: local news and information; educational programs for children and adults; material helpful to nonprofit, charitable, health, or social-service organizations; and programs to allow elected officials and nonprofit organizations to communicate to the community. The Benton Foundation urges that broadcasters be required to provide, for example, at least six hours of children's educational television, free time for candidates, and access to programming time by members of the community.

48. *Decision.* In this proceeding we seek to promote the successful transition of analog broadcast television into a digital broadcast television service that serves the public interest. Broadcasters have long been subject to the obligation to serve the ''public interest, convenience and necessity.'' [8] In the 1996 Act, Congress provided that broadcasters' public interest obligations extend into the digital environment:

> (d) Public Interest Requirement.—Nothing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience, and necessity. In the Commission's review of any application for renewal of a broadcast license for a television station that provides ancillary or supplementary services, the television licensee shall establish that all of its program services on the existing or advanced television spectrum are in the public interest.

In enacting this provision, Congress clearly provided that broadcasters have public interest obligations on the program services they offer, regardless of whether they are offered using analog or digital technology.

49. In the digital television era, although many aspects of the business and technology of broadcasting may be different, broadcasters will remain trustees of the public's airwaves. Our current rules were developed when technology permitted broadcasters to provide just one stream of programming over a 6 MHz channel. We recognize, however, that digital technology expands the effective capacity of 6 MHz of spectrum. For example, it permits, but does not require, licensees to provide several program streams, as well as other digital services, on the 6 MHz channel of spectrum that we are assigning them. The dynamic and flexible nature of digital technology creates the possibility of new and creative ways for broadcasters to serve the country and the public interest.

50. Some argue that broadcasters' public interest obligations in the digital world should be clearly defined and commensurate with the new opportunities provided by the digital channel broadcasters are receiving. Others contend that our current public interest rules need not change simply because broadcasters will be using digital technology to provide the same broadcast service to the public. We are not resolving this debate today. Instead, at an appropriate time, we will issue a Notice to collect and consider all views. As we authorize digital service, however, broadcast licensees and the public are on notice that existing public interest requirements continue to apply to all broadcast licensees. Broadcasters and the public are also on notice that the Commission may adopt new public interest rules for digital television. Thus as to the public interest, our action today forecloses nothing from our consideration.

F. Transition

1. Simulcast

51. *Background.* In our 1992 *Second Report/Further Notice* (57 FR 21755, May 22, 1992), we determined that DTV licensees should simulcast on their NTSC channel the programming offered on their DTV channel. Specifically, we adopted, as a preliminary matter, a 50 percent simulcasting requirement, beginning one year after the six-year application and construction period, increasing to 100 percent two years later.[9] Our early simulcast decisions were based on the expectation that DTV would primarily consist of the broadcast of a single HDTV program service. However, as DTV technology developed, we learned that DTV would be able to do much more than we initially expected and that it would be possible to transmit multiple simultaneous SDTV program services on a single 6 MHz channel. Recognizing that a licensee would be unable to simulcast multiple program services on its NTSC channel, we stated in the *Fourth Further Notice* (60 FR 42130, August 15, 1995) that our simulcast requirement must be revisited and we must consider alternatives. In addition, we stated that we still perceived a need for a simulcast requirement, albeit different from that first envisioned, and proposed to require the simulcast of all material being broadcast on the licensee's NTSC channel on a program service of the DTV channel. We requested comment on this proposal.

52. *Comments.* Broadcasters are divided on the necessity of a simulcast requirement. Numerous comments note that simulcasting is certain to occur even in the absence of a mandate. The Joint Broadcasters emphasize that they believe that much simulcasting of NTSC programming on the DTV channel would happen in the normal course. However, because broadcasters have differing views on the need for a requirement, the group declined to take a position on that issue. NAB and ALTV maintain that a simulcast requirement would be counterproductive and may delay development and penetration of DTV, especially during the early stages of the transition. However, NAB acknowledges that a phase-in of simulcasting near the end of the transition could be an effective means of preventing disenfranchisement of the remaining NTSC viewers. ABC and CBS argue that a simulcast requirement should apply from the outset of the transition. CBS argues that a simulcast requirement could spur the sale of DTV equipment and ensure that DTV and NTSC broadcast services do not evolve into separately programmed services. NBC supports a 50% simulcasting requirement to allow for some innovation. Broadcasters and other commenters arguing against the advisability of a simulcast requirement maintain that rigid requirements would hamper broadcasters' ability to promote and provide the programming that was most likely to draw viewers to the DTV channel. They argue that transition to DTV would occur most rapidly if broadcasters had the maximum flexibility to experiment with new services and to put together offerings that would best satisfy viewers. Commenters point out that simulcasting would slow the transition by preventing broadcasters from enticing viewers to DTV by making desirable programming available on DTV that is not available on NTSC. ALTV also argues that any requirement would be based on speculation about the development of digital service, and therefore imposition of any rule, if necessary at all, should be postponed.

53. Equipment manufacturers recommend that a simulcast requirement be tailored to promote a rapid transition to HDTV and DTV and recovery of NTSC spectrum. The cable industry supports a simulcast HDTV service, that is the broadcast of one program over two channels to the same area at the same time. Public-interest groups generally support requiring DTV broadcasters to simulcast their NTSC

[8] 47 U.S.C. sections 307(a), 309(a); *En Banc Programming Inquiry,* 44 FCC 2303, 2312 (1960).

[9] Additionally, we indicated that we would review this schedule at the time of our initial review of the pace of conversion at the end of the application/construction period and immediately prior to the imposition of 100 percent simulcasting.

service on the DTV channel. Commenters supporting a simulcast requirement argue that such a requirement would expedite the transition from analog to digital by guaranteeing that popular programming services continue to be available, in enhanced technical quality, on the DTV channel. They also point out that simulcasting would prevent the development of two separately programmed services, which might delay the transition. As to the question of phase-in, the Digital Grand Alliance suggests that simulcast requirements be minimal in the early years of the transition to facilitate innovative HDTV programming, and more comprehensive in the later years to avoid perpetuating unique NTSC programming that would make it difficult to cease NTSC broadcasts. Throughout the transition, one DTV program stream should be identical to the program stream carried on the NTSC channel.

54. *Decision.* We decline to adopt a simulcast requirement for the early years of the transition. In order to help reclaim spectrum at the end of the transition period, however, we adopt by the sixth year from the date of adoption of this *Report and Order* a requirement of 50% simulcasting of the video programming of the analog channel on the DTV channel; by the seventh year, a 75% simulcasting requirement; by the eighth year, a 100% simulcasting requirement, until the analog channel is terminated and that spectrum returned.

55. We have previously recognized the need to afford broadcasters flexibility to program their DTV channels to attract consumers, especially during the critical launch phase of DTV. We do not adopt a simulcast requirement during the early years of the transition in order to give broadcasters the ability to experiment with program and service offerings. We are convinced by commenters who argue that many consumers' decisions to invest in DTV receivers will depend on the programs, enhanced features, and services that are not available on the NTSC service, and a simulcast requirement might limit broadcasters' ability to experiment with the full range of digital capabilities. Because the DTV channels represent valuable resources with large opportunity costs, we believe licensees will have economic incentives to provide programming and services that will attract consumers to DTV. In any event, a simulcast requirement during this initial transition phase appears to be unnecessary because the record suggests that marketplace forces will ensure that the best NTSC programming will be simulcast on the digital channel and broadcasters have indicated that they will simulcast NTSC programs on the DTV channel even in the absence of a requirement.

56. While we believe that a simulcast requirement is not warranted during the early years of the transition, there are benefits to a simulcast requirement near the end of the transition period. Such a requirement will help ensure that consumers will enjoy continuity of free over-the-air program service when we reclaim the analog spectrum at the conclusion of the transition period. It may be difficult to terminate analog broadcast service if broadcasters show programs on their analog channels but not on their digital channels. We believe that it will be easier to terminate analog services and reclaim the spectrum at the end of the transition if most broadcast households are capable of receiving DTV signals and these households do not suffer the loss of a current program service only offered on analog channels. Thus, we will require a phased-in simulcasting requirement as follows: By the sixth year from the date of adoption of this *Report and Order,* we adopt a 50% simulcasting requirement; by the seventh year, we adopt a 75% simulcasting requirement; by the eighth year, we adopt a 100% simulcasting requirement which will continue until the analog channel is terminated and the analog spectrum returned. We recognize that we will need to define clearly ''simulcasting'' in the context of DTV and will do so as part of our two-year reviews or other appropriate proceeding.

2. Licensing of DTV and NTSC Stations

57. *Background.* The *Second Report/ Further Notice* (57 FR 21755, May 22, 1992) determined to treat the licensee as having two separate licenses. In the *Fourth Further Notice/Third Inquiry* (60 FR 42130, August 15, 1995), however, the Commission tentatively concluded that substantial benefits could be obtained if the NTSC and ATV facilities were instead authorized under a single, unified license. The Commission tentatively decided that such a policy would ease administrative burdens on the Commission and broadcasters alike by reducing the number of applications that would have to be filled out, filed, and processed, and would be consistent with our authority under section 316 of the Act to modify an existing license. Licensing the two facilities under a single license would also retain the policy announced in the *Second Report/ Further Notice* of treating both facilities the same for revocation/nonrenewal purposes.

58. *Comments.* Those commenters, which include broadcasters, networks, and equipment manufacturers, who address this issue largely support our revised proposal for a single, paired license. One commenter, broadcaster Golden Orange, argues that the DTV and NTSC stations should have separate licenses.

59. *Decision.* We adopt our tentative conclusion, echoed by nearly all those who commented, that the NTSC and DTV facilities should be licensed under a single, paired license. As determined earlier, this system will help the Commission and broadcasters alike by keeping administrative burdens down. It is also consistent with our intention to treat the DTV license and the NTSC license together for the purposes of revoking or not renewing a license. Once broadcasters have satisfied construction and transmission requirements, they will receive a single, paired license for the DTV and NTSC facilities.

60. One of our objectives is to promote broadcasters' ability to build digital businesses so that their valuable free programming service will continue. We anticipate that some licensees may find it beneficial to develop partnerships with others to help make the most productive and efficient use of their channels. We intend to give broadcasters flexibility in structuring business arrangements and attracting capital to build a successful DTV business. One of our overarching objectives is to promote the success of digital television. We anticipate that some licensees may find it beneficial to develop partnerships with others to help make the most productive and efficient use of their channel, and we will look with favor on such arrangements. Broadcasters may find it useful to work with other broadcasters or others who have special expertise in exploiting digital technology. Parties could come together for the sharing of facilities, costs, and equipment, the development and provision of programming and service offerings, access to capital and financing, the establishment of business plans, and the like. Such arrangements will aid both broadcaster and public, by helping the broadcaster achieve the most competitive and beneficial business strategy and by ensuring for the public the best use of the digital spectrum, including not only the most efficient use of the spectrum but also the greatest array of valuable services. Variations on partnerships have arisen in other contexts, which indicates that they are efficient and useful. For example, in the common network/affiliate relationship,

a network provides programming and advertising that its affiliates may use. Another example is the Commission's authorization of Instructional Television Fixed Services (ITFS) licensees to lease, for profit, their excess capacity to other service providers. We are receptive to the establishment of like arrangements in the DTV context. Whatever the arrangement, it is the licensee who remains responsible for ensuring the fulfillment of all obligations incumbent upon a broadcast licensee.

G. Application/Construction Period

61. *Background.* The *Second Report/Further Notice* (57 FR 21755, May 22, 1992) adopted a two year application period and an additional three years for construction of a DTV facility. We were concerned that without a specific timetable, some parties might delay construction while waiting for others to take the lead, to the detriment of our goal of expeditious DTV implementation. We clarified that broadcasters who did not apply and construct within the established time period (and who failed to obtain an extension of time) would lose their initial eligibility for a DTV frequency. We noted that existing policies regarding extensions of time would afford broadcasters adequate flexibility to cope with unforeseen implementation problems.[10] We defined ''construction'' as the capability of emitting DTV signals, regardless of the source of these signals (*e.g.*, local origination, pass-through of a network signal, or other signal). This definition of construction would allow broadcasters to ''phase-in'' full DTV implementation as their individual circumstances and markets permit.

62. In the *Third Report/Further Notice* (57 FR 53588, November 12, 1992), we adjusted the application deadline from a two-year to a three-year period, and provided for a total six-year application and construction period with those applying early having a longer portion of the six-year period to devote to construction of DTV facilities. We explained that the deadlines for application and construction would assist in our reclamation of the reversion channel and our sliding scale approach would provide sufficient relief to small-market stations which produce less revenue. While we recognized that some stations would be market leaders in the implementation of DTV, we remained concerned that such leadership may not emerge, at least in certain markets, unless we established a clear framework for the DTV transition.

63. The *Fourth Further Notice/Third Inquiry* (60 FR 42130, August 15, 1995) proposed a procedure by which broadcasters would have six months in which to make an election and confirm to the Commission that they want a DTV license. After that, they would have the remainder of the three-year period in which to supply any required supporting data, and a total of six years to complete construction. If they would elect not to construct a DTV facility, or would elect but then fail to construct, their NTSC licenses would expire at the end of the DTV conversion period, and they would be required to cease broadcasting. We sought comment on all aspects of the construction period. We asked whether certain classes of stations should be afforded special relief, and if so, which classes.

64. *Comments.* While most commenters do not specifically address the election period, some voice approval of a six-month election period.[11] The Digital Grand Alliance, however, suggests that the six-month election period be accompanied by a mechanism to ensure that this election represents real commitment to convert, such as the imposition of a non-refundable application fee, a substantial deposit refunded at commencement of DTV broadcast, or a fine if the broadcaster fails to commence DTV broadcast. On the other hand, Busse and Pacific FM argue that the 6-month election period is not a viable choice, because those who do not want a DTV license have, in effect, elected to go out of business since, under the Commission's proposal, all licensees will be required to cease broadcasting in NTSC at the end of the transition period.

65. Commenters voice many views. Many generally support the Commission's suggested timeframe, but suggest that the Commission take account of the fact that practical impediments may arise to implementation. While in support of the proposal for many stations, Joint Broadcasters, joined by ALTV, propose that a less demanding schedule and liberal waivers apply to help stations facing difficulty, such as noncommercial stations, small stations, those in small or rural markets, or in financial distress, as well as for those stations that face FAA, zoning, or other similar problems. Busse points out that even stations in large markets—such as those with religious or specialty formats—may have difficulty making a timely transition. NAB suggests that the construction deadline be staggered on a market-by-market basis, in which large-market stations have six years, and small-market stations have three or six additional years, to complete construction, and in addition that waivers for problems such as zoning approvals also be available. The Association of Federal Communications Consulting Engineers argues that the six-year implementation period is inadequate, given the number of stations that will need to acquire transmission equipment, input/monitoring equipment, and tower structures during that limited timeframe. Christian Communications of Chicagoland proposes that the Commission recognize that the application/construction period operate as a ''guideline subject to revision'' rather than a set deadline.

66. Others maintain that, at least in some cases, the six-year period is too long. Thomson and the Digital Grand Alliance propose that the Commission shorten the application and construction periods at least in the 25 largest markets, but do not specify what period would be appropriate. General Instrument proposes that a three-year construction period be considered for major markets, and a six-year period for smaller markets. Motorola argues that, given the notice that broadcasters have been afforded, the appropriate timetable is a six-month application period, a six-month processing and grant period, and a two-year construction period.

67. *Decision.* We will apply a streamlined three-stage application process to the group of initially eligible analog permittees and licensees allotted a paired channel in the DTV Table of Allotments.[12] We will soon issue a Public Notice detailing the procedures to be followed, but will describe them briefly here.

68. *Stage One—Initial Modification License for DTV.* Pursuant to the 1996 Act and the eligibility criteria discussed above, we issue, by this paragraph and the attached Appendix E, additional DTV licenses to those initially eligible to receive them.

69. The statute directs us to limit initial eligibility for DTV licenses to persons that, as of the date of the issuance of the licenses, are licensed to operate a television broadcast station or hold a permit to construct such a station, or both. As the statute contemplates, we hereby issue a license

[10] For additional clarification of our extension policies, *see, Second Report/Further Notice* (57 FR 21755, May 22, 1992), *supra* at 3347–48.

[11] *See, e.g.*, Comments of Joint Broadcasters at 12; Comments of Thomson at 7; Comments of General Instrument at 16; Comments of Golden Orange at 6; Comments of New World Television at 8.

[12] We note that under section 553(b)(A), notice and comment are not necessary for rules of agency procedure or practice. 5 U.S.C. 553(b)(A).

to all eligible licensees and permittees, a list of which is attached to this *Report and Order* as Appendix E. We conclude that it more effectively effectuates the congressional scheme to implement the statute through a three-phased process, with the first phase consisting of the initial DTV license, rather than through our conventional procedure. Use of the conventional licensing process would prevent us from establishing a date certain at which to determine initial eligibility, a process that is necessary to allow us to establish the Table of Allotments. Thus, we hereby issue a license, conditioned upon satisfaction of the additional requirements set out in ¶ 70–75 below. This license will modify the analog television permit or license; however, licensees may not begin construction or transmission until the additional conditions are met.[13] The license is also conditioned upon the requirement that ''either the additional license or the original license held by the licensee be surrendered to the Commission for reallocation or reassignment (or both) pursuant to Commission regulation.''

70. *Request for Cancellation.* We presume that the recipients will welcome receipt of their initial DTV License and will be fully committed to the conversion to DTV. Nonetheless, there may be some broadcasters who do not wish to receive a second channel to convert to DTV. We wish to reclaim these second channels as quickly as possible so that the spectrum may be awarded to those who would use it quickly and effectively, and we earlier proposed a six-month election period to accomplish this result. We now believe that a six-month election period is too long. Given the length of this proceeding and the public benefits of acting quickly, we believe that broadcasters have already had ample time to consider many options, and will shorten the ''election'' period. In order to achieve the benefits of a rapid election and in the interests of spectrum efficiency, we ask that licensees who wish to cancel the initial DTV license do so by writing the Commission within 90 days from the release date of the DTV Table of Allotments adopted in the *Sixth Report and Order.*

71. *Stage Two—Certification or Application for Construction Permit.* To receive authorization for commencement of construction, an Initial DTV Licensee must file modified Form 301, attached as Appendix D, and the appropriate fee to obtain a construction permit. Noncommercial stations must file a modified Form 340. The application must be filed before the mid-point in a particular applicant's required construction period has expired. The Bureau will begin acting upon applications as soon as this *Report and Order* becomes effective.

72. We will apply a certification procedure for applicants that answer ''yes'' to a checklist of requirements contained in the construction permit application; these certifications will be automatically granted. Given the very rapid review permitted by this streamlined procedure, we will be able to grant a construction permit to broadcasters within a matter of days of submission of this form. Other applicants will be required to furnish additional technical information.

73. In the *Fifth Further Notice* (61 FR 26864, May 29, 1996), *supra* at ¶ 59, we sought comment on whether specific TV technical and procedural rules should be applied to DTV and whether modification of the rules was needed. Among those NTSC TV rules were section 73.685 and 73.1030. No comments addressed these issues. We herein establish a minimum set of technical requirements that will allow us to process these DTV construction permit applications. Fundamentally, a DTV application must conform to the DTV Table we are creating in the *Sixth Report and Order*, specifying the indicated channel at a transmitter site, effective radiated power (''ERP'') and antenna height meeting the restrictions imposed in that document. As described in the *Sixth Report and Order*, applications specifying a transmitter site within five kilometers of the site assumed in the DTV Table and also specifying an ERP and antenna height that do not exceed the values in the DTV Table will be accepted and not subject to interference-protection processing. Further, in order to avoid exposing the public to dangerous situations, we will continue the NTSC TV practice of verifying that the FAA has made any necessary determination that the proposed tower does not represent a hazard to air navigation, and we will require DTV applicants to certify as to no significant environmental impact or to include an environmental statement as described in section 1.1307 of our rules, including consideration of RF radiation levels. In addition, to avoid altering an AM radio station's radiation pattern in a way that could cause interference in the AM radio band, we will require DTV applications to comply with section 73.658(h). To avoid interference to our spectrum monitoring functions and to radio astronomy observations, we will also require DTV applications to comply with section 73.1030. Additionally, as discussed below, the DTV service contour will be required to encompass the community of license.

74. To speed the process, we will consider the DTV applications or certifications as involving a minor change in facilities[14] and will process them accordingly. Since this application will be for a minor change, applicants will not have to supply full legal or financial qualifications information.[15] We will not initially require full-replication of the analog station's coverage area by DTV facilities. Accordingly, we will accept initial construction permit applications from applicants who demonstrate that their DTV coverage encompasses the community of license.[16] In situations where applicants seek a waiver of any of our requirements, we will entertain requests to allow them to begin

[13] As discussed below, we expect that the application or certification process will be speedy and will not delay applicants as they prepare to implement the build-out.

[14] Pursuant to section 73.3572(a)(1) of the Commission's rules, a major change in a television station's facilities is any change in frequency or community of license. 47 CFR § 73.3572(a)(1). The change involved in constructing and operating a DTV facility does not constitute a change in frequency, merely the implementation of the initial DTV License on a channel assigned in the *Sixth Report and Order.* The analog site will remain on the same frequency. Moreover, the DTV facility will, of course, be licensed to the same community, since it will be part of one license. We note that in our *Notice, supra* at 7026, we sought comment as to whether, as an alternative to a dual licensing scheme, we should treat the addition of a DTV channel as a major modification. We now conclude that it should be treated as a minor modification for the reasons discussed herein.

[15] In the *Third Report/Third Further Notice* (57 FR 53588, November 12, 1992), *supra* at 6945–46, we noted that we would not relax the financial qualifications showing required for a broadcast applicant. We were concerned that applicants that were not financially qualified could tie up the spectrum without ever obtaining the funds necessary to build the facility, thus negating a reason for restricting eligibility to existing broadcasters—*i.e.,* their ability to implement DTV swiftly. Our decision to treat the construction permit as a minor modification, however, eliminates the need for a financial qualifications showing. Moreover, Congress has determined that we should limit eligibility to existing broadcasters, and we have decided to streamline the application process so that DTV can be implemented quickly.

[16] While the *Sixth Report and Order* establishes the upper limit for DTV facilities, we believe that we should allow construction initially of DTV facilities that provide service to a smaller area. At the same time, stations should not be able to claim that they have completed required construction when they have built facilities that are so low in power that they reach no meaningful service area. Accordingly, as noted above, we establish the initial required coverage area as the community of license. During the first two-year review, we will consider whether to modify the build-out requirement to require a full-replication facility as well as adjustments to the protection of the full-replication facility.

construction, at their own risk, prior to the grant of a construction permit.

75. *Stage Three—Application for License to Cover Construction Permit for a DTV Facility.* When construction of the DTV facility has been completed, the permittee may commence program tests upon notification to the FCC, provided that an application for a license to cover the construction permit for the DTV facility, on Form 302, is filed within ten days, along with the appropriate fee.[17]

76. *Construction Schedule.* We have decided to adopt the following construction requirements. Stations affiliated with ABC, CBS, Fox and NBC must build digital facilities in the ten largest television markets by May 1, 1999. Stations affiliated with ABC, CBS, Fox and NBC in the top 30 television markets, not included above, must construct DTV facilities by November 1, 1999. All other commercial stations must construct DTV facilities by May 1, 2002. All noncommercial stations must construct their DTV facilities by May 1, 2003. We note that 24 stations in the top ten markets have voluntarily committed in writing to the Commission to building DTV facilities within 18 months. We applaud these broadcasters' voluntary commitments to give a great number of viewers access to a DTV signal in a very short period. This important step means that a significant portion of the public will be able to receive multiple signals by the holiday shopping season, when nearly 40 percent of all receivers are sold. We ask that those stations that have represented to the Commission that they will have completed construction of the DTV facility by November 1, 1998, file reports at six-month intervals, beginning on November 1, 1997, stating that their plans to meet these deadlines are on schedule or specifying any difficulties encountered in attempting to meet these deadlines.

77. We will grant an extension to the applicable deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the licensee's control if the licensee has taken all reasonable steps to resolve the problem expeditiously. Such circumstances include, but are not limited to, the inability to construct and place in operation a facility necessary for transmitting DTV, such as a tower, because of delays in obtaining zoning or FAA approvals, or similar constraints, or the lack of equipment necessary to transmit a DTV signal. We do not anticipate that the circumstance of ''lack of equipment'' would include the cost of such equipment. With respect to extensions of the applicable construction deadline, the Commission will take into account problems encountered that are unique to DTV conversion, and will modify its existing policies regarding extensions accordingly. Authority is delegated to the Chief of the Mass Media Bureau to grant an extension of time of up to six months beyond the applicable construction deadline, upon demonstration by the DTV licensee or permittee that the standard discussed above is met, but the Bureau may grant no more than two extension requests upon delegated authority. Subsequent extension requests will be referred to the Commission.

78. Our decision to adopt different requirements for different categories of broadcasters is similar to the market-staggered approach favored by most broadcasters and equipment manufacturers. We agree that the most viewed stations in the largest television markets can be expected to lead the transition to DTV and that these stations are better situated to invest the capital necessary to establish the first DTV stations. We also agree that smaller market stations will find it easier to begin DTV service after learning from the experience gained by the larger market stations. In addition, we agree that our staggered construction schedule will help keep costs lower for smaller market stations, as equipment costs decrease as the market matures. In addition, a tiered approach allows us to ensure that DTV quickly reaches a large percentage of U.S. television households while placing requirements on a relatively small number of stations.

79. Our earlier preliminary decision to provide for an across-the-board six-year application/construction schedule is no longer appropriate. We now believe that a general six-year construction schedule would unnecessarily delay the realization of our goals of free, universal DTV service and spectrum recovery. A six-year construction schedule for all commercial stations anticipated neither the rapid development of digital technologies nor the ability of manufacturers and suppliers to provide DTV equipment. In light of these changes, we now believe that the six-year construction period is too long. Instead, we believe that an aggressive construction schedule should be implemented for several reasons.

80. First, digital broadcast television stands a risk of failing unless it is rolled out quickly. Many operators in other media such as DBS, cable, and wireless cable use or plan to use digital technology. Unless digital television broadcasting is available quickly, other digital services may achieve levels of penetration that could preclude the success of over-the-air, digital television. Viewers who have leased or purchased digital set-top boxes from competing digital media may be less likely to purchase DTV receivers or converters. If digital, over-the-air television does not succeed, however, viewers will be without a free, universally available digital programming service.

81. Second, a rapid construction period will promote DTV's competitive strength internationally, as well as domestically. Other countries are moving swiftly to establish their own terrestrial digital television services. For example, the United Kingdom is scheduled to begin broadcasting terrestrial digital television by 1998 or earlier. Japan has recently announced that it will move from analog high definition television to digital television. Neither European nor Japanese digital standards are compatible with the U.S. standard. In the DTV Standard proceeding, equipment manufacturers and labor unions argued that quick and decisive action was necessary to permit American companies to compete internationally. The National Telecommunications and Information Administration and the Office of Science and Technology Policy argued that absent quick action, America might relinquish its technological lead to international competitors, while rapid adoption would spur the American economy in terms of manufacturing, trade, technological development, international investment, and job growth. Rapid introduction of digital television in the U.S. will help facilitate its adoption abroad.

82. Third, an aggressive construction schedule helps to offset possible disincentives that any individual broadcaster may have to begin digital transmissions quickly, as well as the possible absence of market forces that might themselves ensure rapid construction. We recognize that an individual broadcaster may consider implementation of DTV to require it to invest funds in order to capture viewers for which it is already receiving advertising revenue. Such a broadcaster

[17] Pursuant to section 1.68(a) of the Commission's rules, 47 CFR § 1.68(a), the Commission will grant the application where it finds that ''all the terms, conditions, and obligations set forth in the application and permit have been fully met, and that no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest.''

might prefer to wait until others have converted to digital for a number of reasons, including lower equipment costs. On the other hand, a broadcaster may recognize first-mover advantages, such as being first to market with programs in higher definition or with ancillary data services. Our schedule ensures rapid construction in major markets.

83. Fourth, a rapid build-out works to ensure that recovery of broadcast spectrum occurs as quickly as possible. As we discuss in the *Sixth Report and Order*, at the end of the transition we plan to recover 78 MHz of clear spectrum in addition to the 60 MHz of partially encumbered spectrum we plan to recover in the near future from channels 60–69. We will also recover at the end of the transition that spectrum within channels 60–69 that is still needed for analog and digital television broadcasting during the transition.

84. By adopting construction requirements, we hope to give the various industries involved the certainty to move forward. Penetration of color television sets, for example, was limited until the three major networks began transmitting prime time programming in color. This provides evidence that consumers may not purchase great numbers of DTV sets or converters until multiple stations in their market are transmitting DTV, and that we therefore should adopt construction requirements that ensure that there are multiple digital television broadcasters operating. Television manufacturers plan to have the first digital television sets ready for purchase by the public by mid-1998. The construction schedule set forth here provides that multiple stations in most of the top ten markets are operating at roughly that time.

85. Our construction schedule will facilitate our goal of having at least 40 facilities affiliated with the four top networks in the top 10 markets transmitting DTV by May 1, 1999. Within roughly 24 months in each of the top 10 markets, which cover approximately 30 percent of U.S. television households, viewers will have DTV transmissions available from multiple stations. These signals will come from network affiliates, which are generally the stations with the highest ratings in the market. In the top 30 markets, network-affiliated stations must construct digital facilities by November 1, 1999. These markets include 53 percent of U.S. television households. Stations in the second category will benefit from the success of the stations in the first category, as word spreads from the largest markets to those medium-sized markets. The May 1, 1999, requirement applies to only 40 of the country's approximately 1200 commercial television stations, and only 80 additional stations will be affected by the November 1, 1999, deadline. Over one thousand commercial stations will have until May 1, 2002, to plan for and implement their DTV facilities. Noncommercial stations will have until May 1, 2003, to construct.

86. We believe that our construction schedule is reasonable. We note that the most aggressive requirements apply to stations that we believe are most able to absorb the costs of conversion and are otherwise situated to make the transition quickly: stations affiliated with the four major networks in the largest markets. We base our decision in this regard on several grounds. First, network affiliates consistently garner the highest percentage of audience share, and thus are likely to have substantial revenues that may be used to fund the conversion. Second, network affiliates are in a stronger position than independent stations because they obtain programming from their network and may also receive economic, technical, and other support that would help with respect to the conversion. Affiliates are consistently the most highly watched and generally the most financially successful, with better ratings and consequent higher advertising revenues. Their greater strength should give them a strong position from which to launch their digital service. Accordingly, we believe that network affiliates in the largest markets will be in the best position to make a rapid transition to DTV. We recognize that in some markets, a network has two affiliates, one of which is much stronger, with a much larger audience share, that the other. We have provided relief to the smaller affiliate in such cases, by granting a longer construction deadline. Finally, our construction schedule also focuses on network affiliates because we believe that the sale of receivers and thus the conversion to DTV will be accelerated by the early availability of network programming in DTV.[18]

87. Thus, the roughly two-year construction requirement that applies to these affiliates will both serve the public and be nonburdensome to these broadcasters. By May 1, 1999, markets including fully 30 percent of television households will have access to multiple streams of digital television. The vast majority of commercial broadcasters will have five years in which to construct, and noncommercial stations will have six years in which to construct their digital facilities. We agree with commenters arguing for a shorter construction schedule, especially for broadcasters in the largest television markets. As these commenters point out, broadcasters have been on notice throughout this proceeding of the impending need to convert to DTV. With their greater population coverage and scope of operations, we agree that broadcasters in the largest markets generally will be better able to afford and support a more rapid construction schedule.

88. Moreover, the construction timetable appears to be consistent with the announced plans of the large networks. CBS has received an experimental authorization from the Commission and plans to transmit a DTV signal from the Empire State Building in the spring of 1997. ABC plans to have stations experimenting with digital transmission in early 1998. Fox ordered digital transmitters for its O & O's fully five years ago from Harris Corporation, and plans to have digital transmission between the network and affiliates in place by third quarter 1998. NBC said it would begin broadcasting digital signals 18 months after licenses are awarded. NBC already has designed and is building a $55 million dollar state-of-the-art digital infrastructure at its headquarters at 30 Rockefeller Plaza that will be commissioned this year. On February 2, 1997, WHD–TV, NBC's owned-and-operated model DTV station in Washington, D.C., broadcast ''Meet the Press'' in high resolution, using the new DTV standard. NBC has also announced that it intends ''to move as aggressively and expeditiously as is technically feasible'' to enable all of its owned and operated stations around the country to transmit DTV and is ''encouraging and helping'' its NBC affiliates across the nation in making the transition to DTV.

89. Our confidence in the willingness of licensees to move rapidly is also supported by a recent survey of broadcasters which shows that 28 percent of respondents plan to convert to DTV within two years and 79 percent of respondents plan to convert to DTV within five years. In fact, some broadcasters have already completed arrangements for their digital transmission facilities. For example, the network affiliates in San Francisco have arranged to place their antennae for

[18] We have recognized the value and appeal of network programming in a number of previous decisions. *See Channel 41, Inc.*, 6 FCC Rcd 4109, 4111 (1991) (rule waiver granted in order to preserve ABC programming); *Herald Publishing Co.*, 6 FCC 2d 631 (1967) (waiver granted in part because station proposed to bring NBC network programming to a large number of viewers for the first time).

digital transmission on Sutro Tower. Similarly, in New York City, the CBS-owned station has already arranged to place an antenna for digital transmission atop the Empire State Building.

90. In addition, two experimental digital television stations are already up and running, and were able to begin transmissions just four months after announcing their plans to do so: WHD–TV in Washington, DC, the model station sponsored by the broadcast and equipment industries, and WRAL, in Raleigh, North Carolina. We have also already granted eight requests for experimental facilities, at least five of which are now operating, and we expect to grant another five experimental licenses soon. These efforts reflect the ability of broadcasters to set up facilities, and they have given broadcasters experience with digital television equipment that should help speed its introduction elsewhere. Finally, equipment manufacturers' recent statements that they plan to sell digital television sets by Christmas 1998 is a further expression of confidence and expectation that DTV will be widely available by that time so as to ensure consumer demand.

91. While we recognize that conversion to digital will impose some burden on broadcasters, we have taken steps to ease broadcasters' introduction of digital service by requiring them at the outset only to emit a DTV signal strong enough to encompass the community of license, and not requiring them to begin transmission to achieve full replication. Many broadcasters will be able to use existing towers for digital transmission and reduce the costs of constructing a DTV facility. Many commenters who argued in favor of a longer construction schedule did so based on their contention that construction of full-replication facilities would require more than six years due to hardware supply constraints, insufficient personnel resources, or lack of adequate new tower sites. However, our construction requirement is satisfied by the emission of a DTV signal strong enough to encompass the community of license, rather than the more difficult requirement that broadcasters replicate their existing service areas. Therefore, licensees need not initially construct full-replication facilities. We believe that the establishment of a construction requirement that is more easily satisfied, as well as our staggered approach, will alleviate the difficulties raised by some commenters.

92. One of the most significant issues in converting to digital broadcasting is the construction of new towers or the upgrade of existing towers. As explained above, this burden will be eased by our limited build-out requirement. In addition, while we recognize that there may not be sufficient equipment available in the earliest days to allow for a full-fledged DTV operation to be implemented by all 1,600 television licensees, we are confident that minimal facilities for the handful of licensees in the top ten markets can be assembled in a timely fashion. These facilities need only meet our requirements of serving the community of license, which can be accomplished by the use of existing equipment or prototypes certain to be introduced soon.

93. As for noncommercial stations, we allow them until May 1, 2003, to construct DTV facilities. There is strong support in the record for giving noncommercial stations greater leeway in the construction of DTV facilities. As discussed more fully below, noncommercial stations need and warrant special relief to assist them in the transition. And, as noted above, there are some noncommercial stations at the forefront of DTV. However, we are convinced by the record that noncommercial stations, as a group, may have more difficulty with the transition to DTV than commercial stations. Therefore, we permit noncommercial stations a longer period of time to construct DTV facilities than commercial DTV stations.

H. Recovery Date

94. *Background.* Earlier in this proceeding, the Commission made the preliminary decision to establish a recovery date 15 years from the date of the adoption of an ATV system or the date a final Table of ATV Allotments is effective, whichever is later. At the end of this period, all analog broadcast would cease, and the spectrum used for NTSC would be returned to the Commission. The Commission emphasized that, given the uncertainties surrounding the conversion process and the possible changes in the data on which we relied, setting the recovery date at 15 years was necessarily preliminary. In order to avoid making a decision that would be overtaken by events, the Commission adopted a schedule of periodic reviews to make whatever adjustments might be necessary. The Commission made clear that broadcasters who do not convert to ATV will have to cease broadcasting in NTSC at the end of the 15-year transition period. The Commission explained that establishment of a firm date for full transition would be in the public interest because it would keep administration simple, assure progress toward spectrum recovery on a timely basis, and give parties a clearly defined planning horizon. The *Fourth Further Notice/Third Inquiry* (60 FR 42130, August 15, 1995) explained that a more rapid conversion to ATV might be possible than previously expected. The broadcast industry, including equipment manufacturers, have been aggressive in developing digital television technology, as have alternative programming providers such as Direct Broadcast Satellite (DBS), cable systems, wireless technology, and others. Because of the developing competition, and the drop in prices resulting from the proliferation of digitally based media, the *Fourth Further Notice/Third Inquiry* anticipated that conversion might occur more rapidly than originally anticipated. Commenters were asked to address whether some objective benchmark(s) could be used to determine when broadcasters should cease NTSC transmission.

95. *Comments.* Numerous commenters note that the high degree of uncertainty surrounding the successful establishment of DTV makes it difficult to set an end-point for NTSC service. Many urge us therefore to postpone setting a transition date. Joint Broadcasters argue, for instance, that: ''Even the enterprise of setting self-enforcing benchmarks at this point is highly speculative in the absence of market experience. There are simply too many unknowns that will need to be factored into any such decision—the cost and availability of digital sets, the cost and availability of converters, and ATV penetration levels both in terms of households and sets.'' Some commenters propose that the Commission set a nominal target date for the cessation of NTSC broadcasts, with periodic reviews to monitor the progress of implementation. Others support a settled ''date certain'' approach.

96. If the Commission were to set objective benchmarks, comments suggest several possible benchmarks: a measurement of the total number of sets and total number of households capable of displaying DTV; a measurement of the number of stations transmitting digital signals and the number of households with digital receivers, including set-top boxes; a ''sets-sold'' methodology so that once DTV sets reach some percentage, *e.g.,* 70%, of current TV households, NTSC transmissions would cease three years later; or when a certain percentage, *e.g.*, 80%, of television households no longer rely solely on analog broadcasting.

97. *Decision.* One of our overarching goals in this proceeding is the rapid establishment of successful digital broadcast services that will attract viewers from analog to DTV technology, so that the analog spectrum can be recovered. Accomplishment of this goal requires that the NTSC service be shut down at the end of the transition period and that spectrum be surrendered to the Commission. Indeed, Congress required the Commission to condition the grant of a digital license on the Commission's recovery of 6 MHz from each licensee. The Act provides:

''(c) Recovery of License. —If the Commission grants a license for advanced television services to a person that, as of the date of such issuance, is licensed to operate a television broadcast station or holds a permit to construct such a station (or both), the Commission shall, as a condition of such license, require that either the additional license or the original license held by the licensee be surrendered to the Commission for reallocation or reassignment (or both) pursuant to Commission regulation.''

The question we face is at what point in time the surrender should occur.

98. We continue to believe that it is desirable to identify a target end-date of NTSC service. Doing so will lend certainty to the introduction of digital by making clear to the public that analog television service will indeed cease on a date certain. A target will provide broadcasters and manufacturers with a defined planning horizon that will help them gauge their business plans to the introduction of DTV.

99. While the Commission has previously considered a 15-year end-point for NTSC service, we now believe that broadcasters should be able to convert to digital broadcast much more rapidly. Specifically, we believe that a target of 2006 for the cessation of analog service is reasonable. As the *Fourth Further Notice/Third Inquiry* (60 FR 42130, August 15, 1995) explained, as digital technology has developed, we have had reason to expect that DTV may be adopted more quickly than originally anticipated. Competitors in the video programming market, such as DBS, cable, and wireless cable, have aggressively pursued the potential of digital technology. This competitive pressure has lent urgency to the need for broadcasters to convert rapidly. Furthermore, technological advances have worked to lower the introductory costs to broadcasters; for example, new technology may allow many broadcasters to use existing towers for digital transmission, thus easing the expense of converting to digital equipment. And, due to the introduction of other services, broadcasters who need new towers, will be able to lease space on their new towers to mobile service providers, further lowering the costs of converting. On the viewers' side, technological advances in converter-box technology will lower the consumer costs of the introduction of digital technology. The dramatic drop anticipated in converter-box prices will permit consumers inexpensively to continue to use existing equipment, thus easing the introduction of digital services. Based on our current information, we believe 2006 is a reasonable target.

100. As we discuss below, we will conduct reviews of the progress of DTV every two years. This will allow us to monitor the progress of DTV and to make adjustments to the 2006 target, if necessary. In evaluating the appropriateness of the 2006 target date, key factors for consideration will include viewer acceptance of digital television, penetration of digital receivers and digital-to-analog converter set-top boxes, the availability of digital-to-analog conversion by retransmission media such as cable, DBS, and wireless cable, and generally the number of television households that continue to rely solely on over-the-air analog broadcasting. We emphasize, as we have throughout this proceeding, that at the designated date, broadcasters who do not receive extensions must return one of their two channels.

I. Noncommercial Stations

101. *Background.* In the *Fourth Further Notice/Third Inquiry* (60 FR 42130, August 15, 1995), we noted that noncommercial licensees would face unique problems in their transition to DTV, particularly in the area of funding. Accordingly, we asked for comment on what relief would be appropriate for noncommercial broadcasters. We also noted comments by noncommercial broadcasters that the six-year application/construction period was insufficient, but expressed our preference to establish a firm transition schedule, dealing with unique problems on a case-by-case basis, rather than establishing two sets of broadcasters, each with its own schedule. Finally, we asked what other relief could be afforded to noncommercial broadcasters to assist them in the conversion to DTV, such as by mandating that only the minimum required broadcast programming must be ''noncommercial,'' and to minimize restrictions on their operations and allow them greater flexibility.

102. *Comments.* AAPTS/PBS state that their biggest concern is the ability of noncommercial stations to raise sufficient funds to support current operations and the transition to DTV. Toward that end, they assert that they have worked with Congress to propose legislation that would replace the current system of federal funding for public television stations with new sources of funding. In their Comments, AAPTS/PBS seek flexibility in the application and construction period in light of the financial constraints faced by noncommercial broadcasters, including relaxation or elimination of the financial qualifications requirement and establishment of a less demanding construction schedule for noncommercial stations—requiring only that they construct and begin operating DTV facilities some time prior to the ultimate conversion deadline. Finally, they urge that noncommercial stations that share a channel under their legislative proposal be afforded flexibility to convert to full-time DTV operation on their NTSC channels at any time during the transition period and that the Commission should adopt a waiver policy under which noncommercial stations that operate their own DTV channels would be permitted, on a case-by-case basis to convert to DTV operation on one of the station's 6 MHz channels and cease NTSC operations earlier than the conversion date.

103. MAP also supports relaxing the construction and transition timetables and financial qualifications for public broadcasters. General Instrument notes its general support for government action that would ''mitigate financial problems faced by noncommercial stations in converting to ATV technology, and would lead to conversion as early as possible.'' Further, The Digital Grand Alliance agrees with AAPTS/PBS that the Commission should modify its approach as necessary to promote the conversion of noncommercial stations to DTV. It does not object to affording less demanding construction schedules for noncommercial broadcasters as long as they are operating their DTV channel by the end of the transition period, and it endorses giving them the option to convert to full-time DTV on their NTSC channels at any time during the transition period.

104. *Decision.* At the outset, we note our commitment to noncommercial educational television service and our recognition of the high quality programming service noncommercial stations have provided to American viewers over the years. We also acknowledge the financial difficulties faced by noncommercial stations and reiterate our view that noncommercial

stations will need and warrant special relief measures to assist them in the transition to DTV. Accordingly, we intend to grant such special treatment to noncommercial broadcasters to afford them every opportunity to participate in the transition to digital television, and we will deal with them in a lenient manner. As discussed above, we will not require a financial showing of any broadcaster seeking a construction permit to build a DTV station, and, accordingly, no special treatment will be required of noncommercial broadcasters in this regard. With respect to the construction deadline, discussed above, we will apply a six-year construction period timetable to noncommercial stations, the longest permitted to any category of DTV applicant. We believe, however, that it would be premature to attempt to resolve the issue of what additional special treatment, if any, should be afforded to noncommercial broadcasters at this early date, and we will consider this issue in our periodic reviews. At the same time, however, we wish to note that public broadcasting service was the first to establish a digital satellite transmission system and that public broadcasting licensees are in the forefront of experimenting with digital television. Public broadcasters have taken an innovative approach in experimenting with the capabilities of digital technology.

J. Must-Carry and Retransmission Consent

In the *Fourth Further Notice/Third Inquiry* (60 FR 42130, August 15, 1995), we requested comment on questions relating to the issues of what must-carry obligations and retransmission consent provisions should apply to DTV stations, both during the transition and as a consequence of DTV having replaced NTSC broadcasting. We received comments on these issues from several entities. Subsequent to the issuance of the *Fourth Further Notice/ Third Inquiry*, Congress, in the 1996 Act, gave the Commission some direction as to the scope of must-carry, indicating that no ancillary or supplementary DTV services should have must-carry rights.

106. On March 31, 1997, the Supreme Court upheld the constitutionality of the must-carry provisions contained in the Cable Television Consumer Protection and Competition Act of 1992, in *Turner Broadcasting System, Inc.* v. *FCC* (''*Turner II*''). In upholding the constitutionality of must-carry, the Court emphasized that preserving the benefits of free, over-the-air broadcast television and promoting the widespread dissemination of information from a multiplicity of sources were important governmental interests. The *Turner II* case did not expressly address the issue of must-carry of digital television signals. In order to obtain a full and updated record on the applicability of the must-carry and retransmission consent provisions in the digital context, particularly in light of the *Turner II* decision, we intend to issue a Notice to seek additional comments on these issues.

K. All-Channel Receiver Issues

107. *Background*. Traditionally, we have not regulated broadcast receivers except insofar as they incidentally radiate energy. However, the All Channel Receiver Act authorizes us to require that television receivers ''be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting.'' While we require that all TV broadcast receivers be capable of adequately receiving all channels allocated by the Commission to the television broadcast service, we previously determined in this proceeding that the All Channel Receiver Act does not mandate the manufacture of dual-mode (DTV and NTSC) receivers. We were concerned that such a requirement might burden consumers, and sought comment on whether there is any need to require that manufacturers produce receivers capable of both NTSC and DTV reception during the transition to DTV.

108. In the *Fourth Further Notice of Proposed Rule Making* (60 FR 42130, August 15, 1995), we noted that DTV would have the capability to deliver both HDTV and SDTV and sought comment on whether permitting the manufacture and sale of receivers that receive and display only NTSC, SDTV, or HDTV signals, or some combination, would be consistent with the All Channel Receiver Act and in the public interest. We also requested comment on whether we should regulate how a signal should be displayed, the need for a labeling requirement for television receivers, and limiting the sale of NTSC receivers.

109. *Comments*. Most broadcasters support a requirement that all DTV receivers and set-top converters be able to receive and display NTSC signals, and receive all DTV signals included in the DTV transmission standard and display them in the highest quality format which the particular set is designed to accommodate. Golden Orange argues that the Commission should allow market forces to determine receiver design. The Digital Grand Alliance and most equipment manufacturers argue that manufacturers will build digital receivers that receive all DTV formats, including HDTV, along with NTSC broadcasts, without any FCC requirement. The Digital Grand Alliance states that it would support a requirement that all DTV receivers receive all DTV formats including HDTV, if it were coupled with a requirement that broadcasters transmit minimum amounts of HDTV programming.

110. While most broadcasters and Motorola favor regulations governing how DTV signals are displayed on DTV receivers, most equipment manufacturers and other commenters favor a market-driven approach. Comments are also mixed on the need for labeling requirements. Joint Broadcasters state that the Commission should consider a notice requirement on NTSC-only sets warning consumers that NTSC transmissions will end. New World states that the FCC should require every NTSC-only set to come with a prominent warning that the set will not receive broadcasts after a date certain without modifications. MAP argues that the burdens of labeling are far outweighed by the need to protect consumers. Equipment manufacturers maintain that labeling requirements are unnecessary. EIA states that informational programs and consumer education are critical components of the manufacturer-consumer relationship, so manufacturers will be certain to educate consumers regarding their equipment options during the transition to DTV. On the issue of limiting the sale of NTSC receivers, New World and the AAPTS/PBS favor a requirement that all televisions sold after some date be capable of receiving and displaying digital broadcast transmissions. The Digital Grand Alliance and EIA argue that the Commission should not ban or limit the sale of NTSC-only receivers. During the transition to digital, and perhaps even after, the Digital Grand Alliance contends, there is likely to be a demand for NTSC-only sets driven by cable services, wireless cable services, direct broadcast satellite services, digital video disc players, and VCRs.

111. *Decision*. The digital broadcast transmission standard which we adopted in the *Fourth Report and Order* (62 FR 14006, March 25, 1997) differed from the standard we proposed in the *Fifth Further Notice* (61 FR 26864, May 29, 1996). Many of the comments we received in response to the *Fifth Further Notice* assumed that the Commission would adopt a DTV transmission standard that included specific video formats. However, the standard we

adopted in the *Fourth Report and Order* did not specify video formats. We chose instead to allow video formats to be determined by the market and consumer demand. Because of this important modification, we believe that some of the arguments made by the commenters on specific all-channel receiver issues are no longer applicable.

112. We have decided that, at this time, equipment manufacturers should have maximum latitude to determine which video formats DTV equipment will receive. We believe that it is likely that market forces will provide incentives for broadcasters and equipment manufacturers to work closely together to produce the receiver and converter designs most valued by consumers.

113. We do not believe that our goals would be advanced by mandating that all digital receivers receive and display NTSC signals and DTV signals, regardless of format, aspect ratio, or progressive or interlaced scanning, as broadcasters argue. We expect that equipment manufacturers will make available to consumers digital receivers that receive both NTSC and DTV signals. However, we will not preclude equipment manufacturers from designing digital receivers that do not receive NTSC signals. In addition, we believe that equipment manufacturers should be allowed to offer lower-cost, digital receivers that receive only progressive scan or SDTV formats. Our two-year reviews will give us an opportunity to monitor DTV receiver designs and address any problems that may arise.

114. We have decided to postpone any decision concerning a labeling requirement. We are providing broadcasters flexibility in their choice of video formats and equipment manufacturers flexibility in their choice of receiver designs and we are hopeful that this will result in products and services that draw consumers to DTV. At this early stage of the transition process, we will rely on consumer electronics manufacturers and retailers to provide the information necessary for consumers to make informed choices. Should problems arise, and consumers become confused, as the transition moves forward, we will have opportunity to revisit labeling requirement issues through our review process. Finally, we recognize that there is an enormous embedded base of video cassette recorders, cable decoder boxes, laser disc players, and other video equipment that use NTSC receivers for non-broadcast purposes. This suggests that there may be a continuing market for the sale of NTSC display devices, even after the conversion to DTV. Therefore, we decline to limit the sale of NTSC-only display devices.

L. Review Issues

115. In the *Third Report/Further Notice* (57 FR 53588, November 12, 1992), the Commission set deadlines for the application and construction period, the simulcast requirements, and the transition end-date. The Commission also adopted a timetable, with specific years, for the review of information relating to these time periods, under the assumption that the ATV standard and a table of ATV allotments would be adopted by late 1993. The Commission emphasized that the adoption of certain dates would give parties a measure of certainty, while a schedule for review would permit government and industry to adapt, if necessary, to unforeseen circumstances.

116. While the specific dates established in the *Third Report/Further Notice* (57 FR 53588, November 12, 1992) have been overtaken by events and are no longer applicable, we continue to believe that regular reviews of the progress of DTV are highly desirable. Given the importance of digital television's introduction, we conclude that a periodic review every two years until the cessation of analog service is necessary to allow the Commission the opportunity to ensure that the introduction of digital television and the recovery of spectrum at the end of the transition fully serves the public interest. During these reviews, we will address any new issues raised by technological developments, necessary alterations in our rules, or other changes necessitated by unforeseen circumstances. The Commission will address such issues as the appropriateness of 2006 as a target recovery date, the proper application of the simulcast requirement, the special needs of noncommercial stations, issues related to DTV receiver designs and set labelling, and any other issue that requires examination. Our decisions today, at the very outset of the introduction of digital television, are in some respects necessarily preliminary. A periodic review will permit us to make whatever adjustments will be required.

III. Conclusion

117. Digital television will enter a highly competitive, challenging telecommunications marketplace. Our decisions in this Report and Order, designed to foster technological innovation and competition, while minimizing government regulation, will, we hope, increase the likelihood that we will see a digital television service that provides a host of new and beneficial services to the American public, while preserving free universal television service that serves the ''public interest, convenience, and necessity.''

IV. Administrative Matters

118. The Commission has submitted to OMB an emergency request for approval of: (1) an information collection regarding the cancellation of the Initial DTV License and (2) the form attached to this *Report and Order* to be used to apply for a DTV construction permit. The first request will be used only once and the Commission will not seek extension of the approval for this collection. The second will continue to be used by the public. OMB approved this emergency request and assigned 3060–0766 as the control number. Additionally, this *Report and Order* contains a requirement that those stations that voluntarily committed to building DTV facilities within 18 months are required to submit progress reports on construction of facilities. As required by the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry* (60 FR 42130, August 15, 1995) in this proceeding. The Commission sought written public comments on the proposals in the *Fourth Further Notice*, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (''FRFA'') in this *Fifth Report and Order* conforms to the RFA, as amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (''CWAAA'').[19]

V. Final Paperwork Reduction Act of 1995 Analysis

119. This *Report and Order* contains either a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collections contained in this R&O as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due 60 days from date of publication of this R&O in the **Federal Register**. Comments should address: (a) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission,

[19] *See generally* 5 U.S.C. § 1 *et seq.* (RFA). Title II of CWAAA is The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0027.

Title: Application for Construction Permit for Commercial Broadcast Station.

Form No.: FCC 301.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 1,996.

Estimated time per response: 37 hours—159 hours (This time varies depending of the type of application filed. This collection is contracted out to communications attorneys and consulting engineers for completion of the form.)

Total annual burden: 8,071.

Needs and Uses: FCC 301 is used to apply for authority to construct a new commercial AM, FM or TV broadcast station, or to make changes in the existing facilities of such a station. In addition, FM licensees or permittees may request, by application on FCC 301, upgrades on adjacent and co-channels, modifications to adjacent channels of the same class and downgrades to adjacent channels without first submitting a petition for rulemaking. All applicants using this one-step process must demonstrate that a suitable site exists which would comply with allotment standards with respect to minimum distance separation and city-grade coverage and that it would be suitable for tower construction.

120. To receive authorization for commencement of operation, an initial DTV licensee must file FCC 301 for a construction permit. This application may be filed anytime after receiving the initial DTV license but must be filed before the mid-point in a particular applicant's required construction period. The Commission has developed a new section V–D for DTV engineering which will be added to the FCC 301. The Commission will consider these applications as minor changes in facilities. Applicants will not have to supply full legal or financial qualification information.

121. On 3/7/96, the Commission adopted an Order which amended the Commission's rules to eliminate current national multiple radio ownership restrictions and to relax local radio ownership restrictions (the ''radio contour overlap'' rule). This action was necessary to conform the rules to section 202(a) and 202(b)(1) of the Telecommunications Act of 1996. This action will revise the FCC 301 by removing the Exhibit dealing with market and audience share information.

122. The FCC 301 will also be revised to add the new requirements regarding antenna tower registration. This unique antenna registration number identifies an antenna structure and must be used on all filings related to the antenna structure. Several questions will be added to the engineering portions of the this form to collect this information. This requirement was approved by OMB under control number 3060–0714.

123. The data is used by FCC staff to determine whether the applicant meets basic statutory requirements to become a Commission licensee.

OMB Approval Number: 3060–0034.

Title: Application for Construction Permit for Noncommercial Educational Broadcast Station.

Form No.: FCC 340.

Type of Review: Revision of a currently approved collection.

Respondents: Not for-profit institutions.

Number of Respondents: 646.

Estimated time per response: 37 hours—114 hours (This time varies depending of the type of application filed. This collection is contracted out to communications attorneys and consulting engineers for completion of the form.)

Total annual burden: 2,736.

Needs and Uses: FCC 340 is used to apply for authority to construct a new noncommercial educational AM, FM and TV broadcast station, or to make changes in the existing facilities of such a station.

124. To receive authorization for commencement of operation, an initial DTV licensee must file FCC 340 for a construction permit. This application may be filed anytime after receiving the initial DTV license but must be filed before the mid-point in a particular applicant's required construction period. The Commission has developed a new section V–D for DTV engineering which will be added to the FCC 340. The Commission will consider these applications as minor changes in facilities. Applicants will not have to supply full legal or financial qualification information.

125. This form will be revised to add the new requirements regarding antenna tower registration. This unique antenna registration number identifies an antenna structure and must be used on all filings related to the antenna structure. Several questions will be added to the engineering portions of the FCC 340 to collect this information. This requirement was approved by OMB under control number 3060–0714.

126. The data is used by FCC staff to determine whether the applicant meets basic statutory requirements to become a Commission licensee.

OMB Approval Number: 3060-None.

Title: DTV Report on Construction Progress.

Form No.: None.

Type of Review: New Collection.

Respondents: Business or other for-profit.

Number of Respondents: 24.

Estimated time per response: 0.33 hours (2 times per year).

Total annual burden: 16 hours.

Needs and Uses: By letter to the Commission, 24 stations have voluntarily committed to building DTV facilities within 18 months. The Commission is requesting that these 24 stations file reports at six-month intervals, beginning on November 1, 1997, stating that their plans to meet these deadlines are on schedule or specifying any difficulties encountered in attempting to meet these deadlines.

127. The data will be used by FCC staff to monitor the progress of DTV applicants in the construction of their DTV facilities.

VI. Final Regulatory Flexibility Analysis

128. As required by the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry* in this proceeding.[20] The Commission sought written public comments on the proposals in the *Fourth Further Notice*, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (''FRFA'') in this *Fifth Report and Order* conforms to the RFA, as amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (''CWAAA'').[21]

Need for Objectives of Action

The *Fifth Report and Order* adopts several rules with the following objectives: (1) To promote and preserve free, universally available, local broadcast television in a digital world, thereby preserving free, widely accessible programming that serves the public interest; and (2) to promote

[20] 10 FCC Rcd 10540, 10555 (1995).

[21] *See generally* 5 U.S.C. 1 *et seq.* (RFA). Title II of CWAAA is The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

spectrum efficiency and rapid recovery of spectrum.

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

No comments were received specifically in response to the IRFA contained in the *Fifth Further Notice*. However, some comments indirectly addressed small business issues. In addition, most commenters agreed that DTV licensees should have the discretion to provide a wide variety of ancillary and supplemental services, thereby providing an additional revenue stream that would benefit small entities. Finally, several low power television (''LPTV'') broadcasters, many of which are small entities, want the Commission to extend initial eligibility to LPTV licensees.

Discription and Number of Small Entities to Which the Rule Will Apply

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

129. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' While we tentatively believe that the foregoing definition of ''small business'' greatly overstates the number of television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the new rules on small television stations, we did not propose an alternative definition in the IRFA.[22] Accordingly, for purposes of this *Fifth Report and Order*, we utilize the SBA's definition in determining the number of small businesses to which the rules apply, but we reserve the right to adopt a more suitable definition of ''small business'' as applied to television broadcast stations and to consider further the issue of the number of small entities that are television broadcasters in the future. Further, in this FRFA, we will identify the different classes of small television stations that may be impacted by the rules adopted in this *Fifth Report and Order.*

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

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

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

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

134. *Television Station Estimates Based on Census Data.* The rules amended by this *Fifth Report and Order* will apply to all full service television stations and may have an effect on TV translator facilities and LPTV stations. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable

[22] We have pending proceedings seeking comment on the definition of and data relating to small businesses. In our *Notice of Inquiry* (61 FR 33066, June 26, 1996) in GN Docket No. 96–113 (In the Matter of section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses), FCC 96–216, released May 21, 1996, we requested commenters to provide profile data about small telecommunications businesses in particular services, including television, and the market entry barriers they encounter, and we also sought comment as to how to define small businesses for purposes of implementing section 257 of the Telecommunications Act of 1996, which requires us to identify market entry barriers and to prescribe regulations to eliminate those barriers. Additionally, in our *Order and Notice of Proposed Rule Making* (61 FR 09964, March 12, 1996) in MM Docket No. 96–16 (In the Matter of Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines), 11 FCC Rcd 5154 (1996), we invited comment as to whether relief should be afforded to stations: (1) based on small staff and what size staff would be considered sufficient for relief, e.g., 10 or fewer full-time employees; (2) based on operation in a small market; or (3) based on operation in a market with a small minority work force. We have not concluded the foregoing rule makings.

and other pay television services.[23] Included in this industry are commercial, religious, educational, and other television stations.[24] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[25] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[26]

135. There were 1,509 television stations operating in the nation in 1992.[27] That number has remained fairly constant as indicated by the approximately 1,551 operating television broadcasting stations in the nation as of February 28, 1997.[28] For 1992 [29] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments, or 77% of 1,509 establishments.[30] Thus, the proposed rules will affect approximately 1,551 television stations; approximately 1,194 of those stations are considered small businesses.[31] These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies. We recognize that the proposed rules may also impact minority and women owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0%) of 1,221 commercial television stations in the United States.[32] According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and non-commercial television stations in the United States.[33]

136. It should also be noted that the foregoing estimates do not distinguish between network-affiliated [34] stations and independent stations. As of April, 1996, the BIA Publications, Inc., Master Access Television Analyzer Database indicates that about 73 percent of all commercial television stations were affiliated with the ABC, CBS, NBC, Fox, UPN, or WB networks. Moreover, seven percent of those affiliates have secondary affiliations.[35]

137. There are currently 4,977 TV translator stations and 1,952 LPTV stations which would be affected by the new rules, if they decide to convert to digital television.[36] The Commission does not collect financial information of any broadcast facility and the Department of Commerce does not collect financial information on these broadcast facilities. We will assume for present purposes, however, that most of these broadcast facilities, including LPTV stations, could be classified as small businesses. As we indicated earlier, 77% of television stations are designated as small businesses. Given this situation, LPTV and translator stations would not likely have revenues that exceed the SBA maximum to be designated as small businesses.

138. *Alternative Classification of Small Television Stations.* An alternative way to classify small television stations is by the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity (''EEO'') rule for broadcasting.[37] Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and recordkeeping requirements.[38] We estimate that the total number of commercial television stations with 4 or fewer employees is 132 and that the total number of noncommercial educational television stations with 4 or fewer employees is 136.[39]

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[23] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1, Appendix A–9 (1995).

[24] *Id.* See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes ''Television Broadcasting Stations (SIC Code 4833) as:

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

[25] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 250.

[26] *Id.*; SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and television programs).

[27] FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 250, Appendix A–9.

[28] FCC News Release No. 7033, March 6, 1997.

[29] Census for Communications' establishments are performed every five years ending with a ''2'' or ''7''. *See* Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, supra note 250, III.

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

[31] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 1997 total of 1551 TV stations to arrive at 1,194 stations categorized as small businesses.

[32] *Minority Commercial Broadcast Ownership in the United States*, U.S. Dep't of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications Development Program (''MTDP'') (April 1996). MTDP considers minority ownership as ownership of more than 50% of a broadcast corporation's stock, voting control in a broadcast partnership, or ownership of a broadcasting property as an individual proprietor. Id. The minority groups included in this report are Black, Hispanic, Asian, and Native American.

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

[34] In this context, ''affiliation'' refers to any local broadcast television station that has a contractual arrangement with a programming network to carry the network's signal. This definition of affiliated station includes both stations owned and operated by a network and stations owned by other entities.

[35] Secondary affiliations are secondary to the primary affiliation of the station and generally afford the affiliate additional choice of programming.

[36] FCC News Release No. 7033, March 6, 1997.

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

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

[39] We base this estimate on a compilation of 1995 Broadcast Station Annual Employment Reports (FCC Form 395–B), performed by staff of the Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

Projected Compliance Requirements of the Rule

The *Fifth Report and Order* adopts a number of rules, procedures, and policies, most of which are not expected to involve the imposition of new compliance requirements upon licensees or other entities. These include the rules: (1) Providing 6 MHz channels for each DTV channel; (2) limiting the initial eligibility for DTV channels to existing full-power broadcasters; (3) requiring licensees to provide at least one free digital video programming service that is at least comparable in resolution to today's service and aired during the same time periods that their analog channel is broadcasting; (4) allowing broadcasters full flexibility to respond to the demands of their audience by providing ancillary and supplementary services that do not derogate the mandated free, over-the-air program service; (5) giving broadcasters the discretion as to how much, if any, high definition television programming they will transmit; (6) refraining from imposing a simulcasting requirement upon broadcasters until the final years of the transition; (7) licensing NTSC and DTV television facilities under a single, paired license; (8) stating the Commission's intent to give special relief to noncommercial broadcasters to assist their transition to DTV, including providing them six years within which to construct DTV facilities; (9) allowing equipment manufacturers at this time maximum latitude to determine which video formats DTV equipment will receive, since broadcasters will have the latitude to decide which video formats they will transmit based on market and consumer demand; (10) postponing a decision whether to impose labeling requirements on receiver manufacturers; and (11) declining to limit the sale of NTSC-only display devices in the future.

139. We do expect that three of the rules we adopt today may constitute significant compliance requirements on small entities, as well as on others. First, pursuant to the rule setting a timetable for applying for and constructing DTV facilities, all licensees will have 90 days after the release date of the DTV Table of Allotments to inform the Commission if they do not want a DTV channel. After that, there will be three categories of construction requirements for commercial television stations. In the first category, all network-affiliated stations in the top ten television markets will have until May 1, 1999, to construct their digital facilities. In the second category, all network-affiliated stations in the top 30 television markets not included above will have until November 1, 1999, to construct their digital facilities. In the third category, all other commercial stations will have until May 1, 2002, to construct their DTV facilities. All noncommercial stations will have until May 1, 2003, to construct their DTV facilities. We will ask that those stations that have represented to the Commission that they will complete construction of the DTV facility by November 1, 1998, file reports at six-month intervals, beginning on November 1, 1997, stating that their plans to meet these deadlines are on schedule or specifying any difficulties encountered in attempting to meet these deadlines. We will grant an extension of time where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the licensee's control where the licensee has taken all possible steps to resolve the problem expeditiously.

140. The second rule with compliance requirements, that setting a deadline of 2006 for broadcasters to complete their transition to DTV by surrendering their NTSC spectrum, also affects small entities, as well as others. However, because stations will have constructed their DTV facilities by that time, pursuant to the timetable mentioned above, the compliance requirement is simply to cease transmitting NTSC signals.

141. The third rule with compliance requirements, that setting a graduated simulcast requirement for the last three years of the transition, also affects small entities, as well as others. However, because of the gradual nature of the requirement, as well as the multichannel capabilities of DTV, small entities are not expected to find it difficult to comply.

Significant Alternatives Considered Minimizing the Economic Impact on Small Entities and Consistent with the Stated Objectives

The *Fifth Report and Order* adopts a rule providing 6 MHz channels for each DTV channel. This represents the optimum balance of broadcast needs and spectrum efficiency, and it is consistent with the DTV Standard adopted in the *Fourth Report and Order*. To specify a different channel size at this late date would not promote the goals we sought to achieve in adopting the DTV Standard and would prolong the conversion to DTV, thereby putting broadcasters at a competitive disadvantage to other digital video program providers.

142. The *Fifth Report and Order* also adopts a rule limiting the initial eligibility for DTV channels to existing full-power broadcasters, consistent with the statutory directive to do so contained in the Telecommunications Act of 1996. This minimizes the chances that small entities that already have full-service NTSC licenses or construction permits will be forced to surrender them. However, low power television broadcasters, many of which are small entities, would not automatically be eligible for DTV channels.

143. The *Fifth Report and Order* also adopts a rule requiring licensees to provide at least one free digital video programming service that is at least comparable in resolution to today's service and aired during the same time periods that their analog channel is broadcasting. Accordingly, the provision of this minimum service should impose no economic impact beyond that already imposed by the general requirement that stations construct and operate digital television facilities. At the same time, it ensures that viewers will continue to have access to over-the-air broadcast programming. Finally, it does not impede broadcasters' opportunities to generate revenue through additional advertiser-supported programming or subscription, if they choose.

144. The *Fifth Report and Order* also adopts a rule stating that broadcasters shall have full flexibility to respond to the demands of their audience by providing ancillary and supplementary services that do not derogate the mandated free, over-the-air program service. Such services could include, but are not limited to, subscription television programming, computer software distribution, data transmissions, teletext, interactive services, audio signals, and any other services that do not interfere with the required free service.

145. The *Fifth Report and Order* declines to impose a requirement that broadcasters provide a minimum amount of high definition television programming over the DTV spectrum, and instead leaves this decision to the discretion of broadcasters. Such a minimum requirement might be particularly burdensome on small broadcasters, including many independent and foreign-language stations.

146. The *Fifth Report and Order* also refrains from imposing a simulcasting requirement on broadcasters until the closing years of the transition. However, broadcasters at all times retain the option to simulcast, should they so choose. This discretion assures small entities, as well as others, the flexibility

to compete more efficiently in the video marketplace.

147. However, in order to help reclaim spectrum at the end of the transition period, the *Fifth Report and Order* requires that by the sixth year after its adoption, programming that is aired on a broadcaster's analog channel must be available on its digital channel. This will prevent disenfranchisement of the remaining NTSC viewers when the NTSC spectrum is reclaimed. Thus, commencing April 1, 2003, DTV licensees and permittees must simulcast at least 50% of the video programming transmitted on their analog channel; commencing April 1, 2004, there will be a 75% simulcasting requirement; commencing April 1, 2005, there will be a 100% simulcasting requirement until the analog channel is terminated and returned.

148. The *Fifth Report and Order* also determines that NTSC and DTV television facilities should be licensed under a single, paired license. This will help small broadcasters, as well as others, minimize their administrative burdens and the financial costs associated with them.

149. The *Fifth Report and Order* also sets a timetable by which stations must apply for and construct DTV facilities. It is important to foster an expeditious and orderly transition to digital technology that will allow the public to receive the benefits of digital television, so it is important that viewers in television markets have access to DTV programming and other digital services as quickly as possible. First, pursuant to the rule setting a timetable for applying for and constructing DTV facilities, all licensees will have 90 days after the release date of the DTV Table of Allotments to inform the Commission if they do not want a DTV channel. After that, there will be three categories of construction requirements for commercial television stations. In the first category, all network-affiliated stations in the top ten television markets will have until May 1, 1999, to construct their digital facilities. In the second category, all network-affiliated stations in the top 30 television markets not included above will have until November 1, 1999, to construct their digital facilities. In the third category, all other commercial stations will have until May 1, 2002, to construct their DTV facilities. All noncommercial stations will have until May 1, 2003, to construct their DTV facilities. We will require that those stations that have represented to the Commission that they will complete construction of the DTV facility by November 1, 1998, file reports at six-month intervals, beginning on November 1, 1997, stating that their plans to meet these deadlines are on schedule or specifying any difficulties encountered in attempting to meet these deadlines. We will grant an extension of time where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the licensee's control where the licensee has taken all possible steps to resolve the problem expeditiously.

150. An aggressive construction schedule is necessary for us to meet our main objectives in this proceeding. First, digital broadcast television stands a risk of failing unless it is rolled out quickly. Other media such as DBS, cable, and wireless cable have or soon will offer digital programming services. Unless digital television broadcasting is available quickly, other digital services may achieve levels of penetration that could preclude the success of over-the-air, digital television. Second, a rapid construction period is critical to DTV's competitive strength internationally, as well as domestically. Third, an aggressive construction schedule helps to offset possible disincentives that any individual broadcaster may have to begin digital transmissions quickly, as well as the absence of many market forces that might themselves ensure rapid construction. Fourth, a rapid build-out works to ensure that recovery of broadcast spectrum and its reallocation to other beneficial uses occurs as quickly as possible.

151. This construction schedule takes the needs and interests of small entities into account. The most aggressive requirements apply to stations that we believe will be in the best position to make the transition quickly: Network-affiliated stations in the top 10 television markets. These markets include approximately 30 percent of U.S. television households. Network-affiliated stations consistently have higher ratings, with higher audience numbers, and we assume with greater financial and other resources, so that the above construction requirement will both serve the public and be reasonably nonburdensome to broadcasters. In recognition of the fact that some networks may have in some of the larger markets a second affiliate that is not as strong as the other affiliate, we have minimized the burden on that weaker affiliate by imposing a longer construction deadline. Moreover, we are not requiring licensees initially to construct full-replication facilities. Instead, we are requiring them at the outset only to emit a DTV signal strong enough to encompass the community of license.

152. The *Fifth Report and Order* also concludes that broadcasters should have sufficient time between now and 2006 to complete their transitions to DTV and surrender their NTSC frequencies. It has become clear that conversion, both for stations and for viewers, will cost significantly less than thought at the time of the *Third Report and Order*, which had set a 15-year termination date. Thus, conversion can occur more quickly and NTSC spectrum can be surrendered sooner than earlier anticipated. In addition, the interests of small entities are served through our decision to conduct thorough reviews of the progress of DTV every two years, which will allow us to make adjustments to the 2006 target, if necessary.

153. The *Fifth Report and Order* also states the Commission's intent to give special relief to noncommercial broadcasters to assist their transition to DTV, including providing them with six years within which to construct their DTV facilities. In so doing, the Commission is recognizing the unique financial difficulties often faced by these entities, which, as noted earlier, are likely to be small entities.

154. The *Fifth Report and Order* allows equipment manufacturers at this time maximum latitude to determine which video formats DTV equipment will receive, since broadcasters will have the latitude to decide which video formats they will transmit based on market and consumer demand. We believe that it is likely that market forces will provide incentives for broadcasters and equipment manufacturers to work closely together to produce the receiver and converter designs most valued by consumers. The *Fifth Report and Order* also postpones a decision regarding labeling requirements for manufacturers of receivers. Finally, the *Fifth Report and Order* recognizes that there is an enormous embedded base of video cassette recorders, cable decoder boxes, laser disc players, and other video equipment that use NTSC receivers for non-broadcast purposes. Because there may be a continuing market for the sale of NTSC display devices, even after the conversion to DTV, we decline to limit the sale of NTSC-only display devices. These decisions allow small entities the maximum ability to determine and meet consumer interests.

155. As noted, at least two of our decisions may have a significant economic impact on a substantial number of small entities. We believe that the additional burdens on small entities cannot be diminished, however, without compromising the two primary

goals of this proceeding, as described earlier.

VII. Report to Congress

156. The Commission shall send a copy of this Final Regulatory Flexibility Analysis along with this *Fifth Report and Order* in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). A copy of this FRFA (or a summary thereof) will also be published in the **Federal Register**.

157. For additional information concerning the information collections contained in this *Report and Order* contact Dorothy Conway at 202–418–0217.

Ordering Clauses

158. Accordingly, *it is ordered* That, pursuant to sections 4 (i) & (j), 303(r), 307, 309, and 336 of the Communications Act of 1934 as amended, 47 U.S.C. 154 (i), (j) 303(r), 307, 309, and 336, Part 73 of the Commission's Rules is amended as set forth below.

159. *It is further ordered* That, pursuant to the Contract with America Advancement Act of 1996, the rule amendments set forth below shall be effective June 16, 1997. Written comments by the public on the new and/or modified information collections are due July 15, 1997.

160. *It is further ordered* That the new or modified paperwork requirements contained in this *Report and Order* (which are subject to approval by the Office of Management and Budget) will go into effect upon OMB approval.

161. *It is further ordered* That, upon release of this *Fifth Report and Order*, concurrently released with the *Sixth Report and Order*, this proceeding is hereby terminated.

162. For additional information concerning this proceeding, contact Saul Shapiro, Mass Media Bureau, (202) 418–2600; Mania K. Baghdadi, Mass Media Bureau, Policy and Rules Division, Legal Branch, (202) 418–2130; Dan Bring, Mass Media Bureau, Policy and Rules Division, Policy Analysis Branch, (202) 418–2170; or Gordon Godfrey, Mass Media Bureau, Policy and Rules Division, Engineering Policy Branch, (202) 418–2190.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 73 of title 47 is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 is revised to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

2. Sections 73.624 and 73.625 are added to Subpart E to read as follows:

§ 73.624 Digital Television Broadcast Stations.

(a) Digital television (''DTV'') broadcast stations are assigned channels 6 MHz wide. Initial eligibility for licenses for DTV broadcast stations is limited to persons that, as of April 3, 1997, are licensed to operate a full power television broadcast station or hold a permit to construct such a station (or both).

(b) At any time that a DTV broadcast station permittee or licensee transmits a video program signal on its analog television channel, it must also transmit at least one over-the-air video program signal at no direct charge to viewers on the DTV channel that is licensed with the analog channel. The DTV program service provided pursuant to this paragraph must be at least comparable in resolution to the analog television station programming transmitted to viewers on the analog channel but, subject to paragraph (f) of this section, DTV broadcast stations are not required to simulcast the analog programming.

(c) Provided that DTV broadcast stations comply with paragraph (b) of this section, DTV broadcast stations are permitted to offer telecommunications services of any nature, consistent with the public interest, convenience, and necessity, on an ancillary or supplementary basis. The kinds of services that may be provided include, but are not limited to computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, audio signals, subscription video, and any other services that do not derogate DTV broadcast stations' obligations under paragraph (b) of this section. Such services may be provided on a broadcast, point-to-point or point-to-multipoint basis, provided, however, that no video broadcast signal provided at no direct charge to viewers shall be considered ancillary or supplementary.

(1) DTV licensees that provide ancillary or supplementary services that are analogous to other telecommunications services subject to regulation by the Commission must comply with the Commission regulations that apply to those services, provided, however, that no ancillary or supplementary service shall have any rights to carriage under sections 614 or 615 of the Communications Act of 1934, as amended, or be deemed a multichannel video programming distributor for purposes of section 628 of the Communications Act of 1934, as amended.

(2) In all arrangements entered into with outside parties affecting telecommunications service operation, the DTV licensee or permittee must retain control over all material transmitted in a broadcast mode via the station's facilities, with the right to reject any material that it deems inappropriate or undesirable. The license or permittee is also responsible for all aspects of technical operation involving such telecommunications services.

(3) In any application for renewal of a broadcast license for a television station that provides ancillary or supplementary services, a licensee shall establish that all of its program services on the analog and the DTV spectrum are in the public interest. Any violation of the Commission's rules applicable to ancillary or supplementary services will reflect on the licensee's qualifications for renewal of its license.

(d) Digital television broadcast facilities that comply with the FCC DTV Standard (section 73.682(d)), shall be constructed in the following markets by the following dates:

(1)(i) May 1, 1999: all network-affiliated television stations in the top ten television markets;

(ii) November 1, 1999: all network-affiliated television stations not included in category (1)(i) and in the top 30 television markets;

(iii) May 1, 2002: all remaining commercial television stations;

(iv) May 1, 2003: all noncommercial television stations.

(2) For the purposes of paragraph (d)(1)

(i) the term, ''network,'' is defined to include the ABC, CBS, NBC, and Fox television networks;

(ii) the term, ''television market,'' is defined as the Designated Market Area or DMA as defined by Nielsen Media Research as of April 3, 1997; and

(iii) the terms, ''network-affiliated'' or ''network-affiliate,'' are defined to include those television stations affiliated with at least one of the four networks designated in paragraph (d)(2)(i) as of April 3, 1997. In those

DMAs in which a network has more than one network affiliate, paragraphs (d)(1) (i) and (ii) of this section shall apply to its network affiliate with the largest audience share for the 9 a.m. to midnight time period as measured by Nielsen Media Research in its Nielsen Station Index, Viewers in Profile, as of February, 1997.

(3) *Authority delegated.* (i) Authority is delegated to the Chief, Mass Media Bureau to grant an extension of time of up to six months beyond the relevant construction deadline specified in paragraph (d)(1) of this section upon demonstration by the DTV licensee or permittee that failure to meet that construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control where the licensee has taken all reasonable steps to resolve the problem expeditiously.

(ii) Such circumstances shall include, but shall not be limited to: (a) inability to construct and place in operation a facility necessary for transmitting digital television, such as a tower, because of delays in obtaining zoning or FAA approvals, or similar constraints; or (b) the lack of equipment necessary to obtain a digital television signal.

(iii) The Bureau may grant no more than two extension requests upon delegated authority. Subsequent extension requests shall be referred to the Commission. The Bureau may not on delegated authority deny an extension request but must refer recommended denials to the Commission.

(iv) Applications for extension of time shall be filed at least 30 days prior to the relevant construction deadline, absent a showing of sufficient reasons for filing within less than 30 days of the relevant construction deadline.

(e) The application for construction permit must be filed on Form 301 (except for noncommercial stations, which must file on Form 340) on or before the date on which half of the construction period has elapsed. Thus, for example, for applicants in category (d)(1)(i), the application for construction period must be filed by May 1, 1998.

(f)(i) Commencing on April 1, 2003, DTV television licensees and permittees must simulcast 50 percent of the video programming of the analog channel on the DTV channel.

(ii) Commencing on April 1, 2004, DTV licensees and permittees must simulcast 75% of the video programming of the analog channel on the DTV channel.

(iii) Commencing on April 1, 2005, DTV licensees and permittees must simulcast 100% of the video programming of the analog channel on the DTV channel.

(iv) The simulcasting requirements imposed in paragraphs (f) (i)–(iii) of this section will terminate when the analog channel terminates operation and a 6 MHz channel is returned by the DTV licensee or permittee to the Commission.

§ 73.625 DTV coverage of principal community and antenna system.

(a) *Transmitter location.*

(1) The DTV transmitter location shall be chosen so that, on the basis of the effective radiated power and antenna height above average terrain employed, the following minimum F (50,90) field strength in dB above one uV/m will be provided over the entire principal community to be served:

Channels 2–6	28 dBu
Channels 7–13	36 dBu
Channels 14–69	41 dBu

(2) The location of the antenna must be so chosen that there is not a major obstruction in the path over the principal community to be served.

(3) For the purposes of this section, coverage is to be determined in accordance with paragraph (b) of this section. Under actual conditions, the true coverage may vary from these estimates because the terrain over any specific path is expected to be different from the average terrain on which the field strength charts were based. Further, the actual extent of service will usually be less than indicated by these estimates due to interference from other stations. Because of these factors, the predicted field strength contours give no assurance of service to any specific percentage of receiver locations within the distances indicated.

(b) *Determining coverage.* (1) In predicting the distance to the field strength contours, the F (50,50) field strength charts (Figures 9, 10 and 10b of § 73.699 of this part) and the F (50,10) field strength charts (Figures 9a, 10a and 10c of § 73.699 of this part) shall be used. To use the charts to predict the distance to a given F (50,90) contour, the following procedure is used: Convert the effective radiated power in kilowatts for the appropriate azimuth into decibel value referenced to 1 kW (dBk). Subtract the power value in dBk from the contour value in dBu. Note that for power less than 1 kW, the difference value will be greater than the contour value because the power in dBk is negative. Locate the difference value obtained on the vertical scale at the left edge of the appropriate F (50,50) chart for the DTV station's channel. Follow the horizontal line for that value into the chart to the point of intersection with the vertical line above the height of the antenna above average terrain for the appropriate azimuth located on the scale at the bottom of the chart. If the point of intersection does not fall exactly on a distance curve, interpolate between the distance curves below and above the intersection point. The distance values for the curves are located along the right edge of the chart. Using the appropriate F (50,10) chart for the DTV station's channel, locate the point where the distance coincides with the vertical line above the height of the antenna above average terrain for the appropriate azimuth located on the scale at the bottom of the chart. Follow a horizontal line from that point to the left edge of the chart to determine the F (50,10) difference value. Add the power value in dBk to this difference value to determine the F (50,10) contour value in dBu. Subtract the F (50,50) contour value in dBu from this F (50,10) contour value in dBu. Subtract this difference from the F (50,50) contour value in dBu to determine the F (50,90) contour value in dBu at the pertinent distance along the pertinent radial.

(2) The effective radiated power to be used is that radiated at the vertical angle corresponding to the depression angle between the transmitting antenna center of radiation and the radio horizon as determined individually for each azimuthal direction concerned. In cases where the relative field strength at this depression angle is 90% or more of the maximum field strength developed in the vertical plane containing the pertaining radial, the maximum radiation shall be used. The depression angle is based on the difference in elevation of the antenna center of radiation above the average terrain and the radio horizon, assuming a smooth spherical earth with a radius of 8,495.5 kilometers (5,280 miles) and shall be determined by the following equation:

$A = 0.0277 \text{ square root of } H$

Where:

A is the depression angle in degrees.

H is the height in meters of the transmitting antenna radiation center above average terrain of the 3.2–16.1 kilometers (2–10 miles) sector of the pertinent radial.

This formula is empirically derived for the limited purpose specified here. Its use for any other purpose may be inappropriate.

(3) Applicants for new DTV stations or changes in the facilities of existing DTV stations must submit to the FCC a showing as to the location of their stations' or proposed stations' contour. This showing is to include a map showing this contour, except where applicants have previously submitted

material to the FCC containing such information and it is found upon careful examination that the contour locations indicated therein would not change, on any radial, when the locations are determined under this section. In the latter cases, a statement by a qualified engineer to this effect will satisfy this requirement and no contour maps need be submitted.

(4) The antenna height to be used with these charts is the height of the radiation center of the antenna above the average terrain along the radial in question. In determining the average elevation of the terrain, the elevations between 3.2–16.1 kilometers (2–10 miles) from the antenna site are employed. Profile graphs shall be drawn for 8 radials beginning at the antenna site and extending 16.1 kilometers (10 miles) therefrom. The radials should be drawn for each 45 degrees of azimuth starting with True North. At least one radial must include the principal community to be served even though such community may be more than 16.1 kilometers (10 miles) from the antenna site. However, in the event none of the evenly spaced radials include the principal community to be served and one or more such radials are drawn in addition to the 8 evenly spaced radials, such additional radials shall not be employed in computing the antenna height above average terrain. Where the 3.2–16.1 kilometers (2–10 mile) portion of a radial extends in whole or in part over large bodies of water (such as ocean areas, gulfs, sounds, bays, large lakes, etc., but not rivers) or extends over foreign territory but the contour encompasses land area within the United States beyond the 16.1 kilometers (10 mile) portion of the radial, the entire 3.2–16.1 kilometers (2–10 mile) portion of the radial shall be included in the computation of antenna height above average terrain. However, where the contour does not so encompass United States land area and (1) the entire 3.2–16.1 kilometers (2–10 mile) portion of the radial extends over large bodies of water or foreign territory, such radial shall be completely omitted from the computation of antenna height above average terrain, and (2) where a part of the 3.2–16.1 kilometers (2–10 mile) portion of a radial extends over large bodies of water or over foreign territory, only that part of the radial extending from the 3.2 kilometer (2 mile) sector to the outermost portion of land area within the United States covered by the radial shall be employed in the computation of antenna height above average terrain. The profile graph for each radial should be plotted by contour intervals of from 12.2–30.5 meters (40–100 feet) and, where the data permits, at least 50 points of elevation (generally uniformly spaced) should be used for each radial. In instances of very rugged terrain where the use of contour intervals of 30.5 meters (100 feet) would result in several points in a short distance, 61.0–122.0 meter (200–400 foot) contour intervals may be used for such distances. On the other hand, where the terrain is uniform or gently sloping the smallest contour interval indicated on the topographic map (see paragraph (b)(5) of this section) should be used, although only relatively few points may be available. The profile graphs should indicate the topography accurately for each radial, and the graphs should be plotted with the distance in kilometers as the abscissa and the elevation in meters above mean sea level as the ordinate. The profile graphs should indicate the source of the topographical data employed. The graph should also show the elevation of the center of the radiating system. The graph may be plotted either on rectangular coordinate paper or on special paper which shows the curvature of the earth. It is not necessary to take the curvature of the earth into consideration in this procedure, as this factor is taken care of in the charts showing signal strengths. The average elevation of the 12.9 kilometer (8 miles) distance between 3.2–16.1 kilometers (2–10 miles) from the antenna site should then be determined from the profile graph for each radial. This may be obtained by averaging a large number of equally spaced points, by using a planimeter, or by obtaining the median elevation (that exceeded for 50% of the distance) in sectors and averaging those values. In directions where the terrain is such that negative antenna heights or heights below 30.5 meters (100 feet) for the 3.2 to 16.1 kilometers (2 to 10 mile) sector are obtained, an assumed height of 30.5 meters (100 feet) shall be used for the prediction of coverage. However, where the actual contour distances are critical factors, a supplemental showing of expected coverage must be included together with a description of the method employed in predicting such coverage. In special cases, the Commission may require additional information as to terrain and coverage.

(5) In the preparation of the profile graph previously described, and in determining the location and height above sea level of the antenna site, the elevation or contour intervals shall be taken from the United States Geological Survey Topographic Quadrangle Maps, United States Army Corps of Engineers' maps or Tennessee Valley Authority maps, whichever is the latest, for all areas for which such maps are available. If such maps are not published for the area in question, the next best topographic information should be used. Topographic data may sometimes be obtained from State and Municipal agencies. Data from Sectional Aeronautical Charts (including bench marks) or railroad depot elevations and highway elevations from road maps may be used where no better information is available. In cases where limited topographic data is available, use may be made of an altimeter in a car driven along roads extending generally radially from the transmitter site. United States Geological Survey Topographic Quadrangle Maps may be obtained from the United States Geological Survey, Department of the Interior, Washington, D.C. 20240. Sectional Aeronautical Charts are available from the United States Coast and Geodetic Survey, Department of Commerce, Washington, D.C. 20235. In lieu of maps, the average terrain elevation may be computer generated, except in the cases of dispute, using elevations from a 30 second point or better topographic data file. The file must be identified and the data processed for intermediate points along each radial using linear interpolation techniques. The height above mean sea level of the antenna site must be obtained manually using appropriate topographic maps.

(c) *Antenna system*. (1) The antenna system shall be designed so that the effective radiated power at any angle above the horizontal shall be as low as the state of the art permits, and in the same vertical plane may not exceed the effective radiated power in either the horizontal direction or below the horizontal, whichever is greater.

(2) An antenna designed or altered to produce a noncircular radiation pattern in the horizontal plane is considered to be a directional antenna. Antennas purposely installed in such a manner as to result in the mechanical beam tilting of the major vertical radiation lobe are included in this category.

(3) Applications proposing the use of directional antenna systems must be accompanied by the following:

(i) Complete description of the proposed antenna system, including the manufacturer and model number of the proposed directional antenna.

(ii) Relative field horizontal plane pattern (horizontal polarization only) of the proposed directional antenna. A value of 1.0 should be used for the maximum radiation. The plot of the pattern should be oriented so that 0 degrees corresponds to true North.

Where mechanical beam tilt is intended, the amount of tilt in degrees of the antenna vertical axis and the orientation of the downward tilt with respect to true North must be specified, and the horizontal plane pattern must reflect the use of mechanical beam tilt.

(iii) A tabulation of the relative field pattern required in paragraph (c)(3)(ii) of this section. The tabulation should use the same zero degree reference as the plotted pattern, and be tabulated at least every 10 degrees. In addition, tabulated values of all maxima and minima, with their corresponding azimuths, should be submitted.

(iv) Horizontal and vertical plane radiation patterns showing the effective radiated power, in dBk, for each direction. Sufficient vertical plane patterns must be included to indicate clearly the radiation characteristics of the antenna above and below the horizontal plane. In cases where the angles at which the maximum vertical radiation varies with azimuth, a separate vertical radiation pattern must be provided for each pertinent radial direction.

(v) All horizontal plane patterns must be plotted to the largest scale possible on unglazed letter-size polar coordinate paper (main engraving approximately 18 cm×25 cm (7 inches×10 inches)) using only scale divisions and subdivisions of 1, 2, 2.5. or 5 times 10-nth. All vertical plane patterns must be plotted on unglazed letter-size rectangular coordinate paper. Values of field strength on any pattern less than 10 percent of the maximum field strength plotted on that pattern must be shown on an enlarged scale.

(vi) The horizontal and vertical plane patterns that are required are the patterns for the complete directional antenna system. In the case of a composite antenna composed of two or more individual antennas, this means that the patterns for the composite antenna, not the patterns for each of the individual antennas, must be submitted.

(4) Where simultaneous use of antennas or antenna structures is proposed, the following provisions shall apply:

(i) In cases where it is proposed to use a tower of an AM broadcast station as a supporting structure for a DTV broadcast antenna, an appropriate application for changes in the radiating system of the AM broadcast station must be filed by the licensee thereof. A formal application (FCC Form 301, or FCC Form 340 for a noncommercial educational station) will be required if the proposal involves substantial change in the physical height or radiation characteristics of the AM broadcast antennas; otherwise an informal application will be acceptable. (In case of doubt, an informal application (letter) together with complete engineering data should be submitted.) An application may be required for other classes of stations when the tower is to be used in connection with a DTV station.

(ii) When the proposed DTV antenna is to be mounted on a tower in the vicinity of an AM station directional antenna system and it appears that the operation of the directional antenna system may be affected, an engineering study must be filed with the DTV application concerning the effect of the DTV antenna on the AM directional radiation pattern. Field measurements of the AM stations may be required prior to and following construction of the DTV station antenna, and readjustments made as necessary.

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BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 051297A]

Fisheries of the Exclusive Economic Zone Off Alaska; Greenland Turbot in the Aleutian Islands Subarea

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

ACTION: Modification of a closure.

SUMMARY: NMFS issues a modification of a closure from prohibiting retention to closing the season for directed fishing for Greenland turbot in the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI) by vessels using hook-and-line gear. This action is necessary to prevent significant discard of incidental catch of Greenland turbot.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 12, 1997, until 2400 hrs, A.l.t., December 31, 1997.

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

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.25(a)(1)(i) and (a)(2)(iii), retention of Greenland turbot by vessels using hook-and-line gear in the Aleutian Islands subarea of the BSAI was prohibited to prevent the overfishing of the shortraker/rougheye rockfish species group. This action was filed for public inspection by the Office of the Federal Register on May 9, 1997, and scheduled for publication in the **Federal Register** on May 14, 1997. This action would produce significant discard of incidental catch of Greenland turbot in the sablefish Individual Fishing Quota fishery. In order to prevent the waste of Greenland turbot and prevent the overfishing of shortraker/rougheye rockfish species group, it is necessary to eliminate the prohibition of retention of Greenland turbot and substitute the closure of the season for directed fishing for that species.

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(A) and (a)(2)(iii)(B), that closing the season by prohibiting directed fishing of Greenland turbot by vessels using hook-and-line gear will prevent overfishing of the shortraker/rougheye rockfish species group, and is the least restrictive measure to achieve this purpose. Without this modification, significant discard of incidental catch of Greenland turbot would occur by hook-and-line vessels.

Therefore, NMFS is terminating the previous prohibition of retention and is closing the season for directed fishing for Greenland turbot by vessels using hook-and-line gear in the Aleutian Islands subarea of the BSAI.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent significant discard of incidental catch of Greenland turbot in the Aleutian Islands subarea of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. The fleet has not taken the 1997 TAC of Greenland turbot in the Aleutian Islands. Further delay would only result in discards which would disrupt the FMP's objective of providing sufficient Greenland turbot as bycatch to support other anticipated groundfish fisheries.

NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

Classification

This action is required by § 679.25 and is exempt from review under E.O. 12866.

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

Dated: May 12, 1997.

Bruce C. Morehead,

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

[FR Doc. 97–12810 Filed 5–12–97; 4:57 pm]

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Proposed Rules

Federal Register
Vol. 62, No. 95
Friday, May 16, 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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 343

RIN 3064–AC04

Insured State Nonmember Banks Which are Municipal Securities Dealers

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rescission of rule.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC is proposing to rescind its regulation that requires insured state nonmember banks which are municipal securities dealers to file with the FDIC certain information about those persons who are or seek to be associated with these dealers as municipal securities principals or municipal securities representatives. The FDIC has determined for a number of reasons, including the fact that much of the same information is available in the Municipal Securities Rulemaking Board's (MSRB) regulation G–7, ''Information Concerning Associated Persons'', and that the FDIC is not required by law to issue its own regulations governing the professional qualification of these associated persons, to propose rescission of the regulation because it is unnecessary and duplicative.

DATES: Comments must be received on or before July 15, 1997.

ADDRESSES: Written comments are to be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to Room F–402, 1776 F Street, NW., Washington, DC 20429, on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898–3838; internet address: comments@FDIC.gov). Comments will be available for inspection in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 5 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Carol A. Mesheske, Chief, Special Activities Section, (202) 898–6750, Division of Supervision; or Karen L. Main, Senior Attorney, (202) 898–8838, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

The FDIC adopted part 343 as a final rule on August 8, 1977. 42 FR 40891 (August 12, 1977), and it became effective on October 31, 1977. 42 FR 46275 (September 15, 1977). Part 343 requires insured state nonmember banks and certain of their subsidiaries, departments and divisions, as specified in section 3(a)(34)(A)(iii) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (Act), which are municipal securities dealers, as defined in section 3(a)(30) of the Act, to file with the FDIC information about persons who are associated with them as municipal securities principals or municipal securities representatives.

The Securities Acts Amendments of 1975 (Pub. L. 95–29) amended the Act to provide for the creation of the MSRB and delegated responsibility to it to formulate rules regulating the activities of municipal securities dealers. However, the Act distributes authority to enforce MSRB rules among the Securities and Exchange Commission (SEC), the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board (FRB) and the FDIC. As specified in section 3(a)(34)(A)(iii) of the Act, the FDIC is authorized to enforce compliance with MSRB rules by an insured state nonmember bank, a subsidiary or a department or a division thereof, which is a municipal securities dealer (hereinafter referred to as a ''state nonmember bank municipal securities dealer'').

One of the areas in which the Act directs the MSRB to promulgate rules is the qualification of persons associated with municipal securities dealers as municipal securities principals and municipal securities representatives as those positions are defined in MSRB Rule G–3. Paragraph (b) of MSRB Rule G–7 requires persons who are or seek to be associated with municipal securities dealers as municipal securities principals or municipal securities representatives to provide certain background information and conversely, requires the municipal securities dealers to obtain the information from such persons. Generally, the information required to be disclosed relates to employment history and professional background including any disciplinary sanctions and any claimed bases for exemption from MSRB examination requirements. Paragraph (b) of MSRB Rule G–7 provides that a ''completed Form U–4 or similar form prescribed * * * in the case of a bank dealer, by the appropriate regulatory agency, containing the foregoing information, shall satisfy the requirements of this paragraph.'' The FDIC has developed, in conjunction with the OCC and the FRB (collectively, the Banking Agencies), Form MSD–4 to satisfy the requirements of paragraph (b) of the MSRB's Rule G–7.

Under paragraph (c) of MSRB Rule G–7, a person who is or seeks to be associated with a municipal securities dealer is required to furnish the dealer with a statement correcting information furnished under paragraph (b) of MSRB Rule G–7 to the extent that such information becomes materially inaccurate or incomplete. To maintain the accuracy of the information which is filed on Form MSD–4, the FDIC requires state nonmember bank municipal securities dealers to file with the FDIC copies of statements such dealers receive pursuant to paragraph (c) of MSRB Rule G–7 and Form MSD–5s for municipal securities principals and municipal securities representatives whose association with such dealers terminates. Form MSD–5 is a notification by a municipal securities dealer that a municipal securities principal's or a municipal securities representative's association with the dealer has terminated and the reasons for such termination. The informational requirements discussed above, as set forth in part 343, track very closely the corresponding requirements described in MSRB Rule G–7, paragraphs (b) and (c).

There are also record retention requirements contained in paragraphs (e) and (f) of the MSRB's Rule G–7. The FDIC has imposed a virtually identical requirement on state nonmember bank

municipal securities dealers in section 343.3(d).

Paragraph (g) of the MSRB's Rule G–7 requires every bank municipal securities dealer to file with the appropriate regulatory agency for such bank dealer ''such of the information prescribed by this rule as such * * * agency * * * shall by rule or regulation require''. The FDIC requires that each such state nonmember municipal securities dealer file Form MSD–4s, the statements described in paragraph (c) of MSRB Rule G–7 and Form MSD–5s with the FDIC for each person associated with the dealer as a municipal securities principal or municipal securities representative. The filing of Form MSD–4s, MSRB Rule G–7(c) statements and Form MSD–5s with the FDIC constitute ''reports'', ''applications'' or ''documents'' within the meaning of section 32(a) of the Act and constitute filings with the SEC for purposes of section 17(c)(1) of the Act. Section 17(c)(1) of the Act requires every municipal securities dealer which files an application, notice, report or document with the FDIC to file a copy of such application, notice, report or document with the SEC.

The FDIC's part 343 is identical in all significant respects to the comparable regulations adopted by the FRB (§ 208.8j) and the OCC (part 10). The Banking Agencies also cooperated in drafting the forms. Part 343 has not been amended by the FDIC in any significant manner since its adoption in August 1977.

II. Basis for Rescission

A. Implementing Regulations Are Not Required by the Act

Section 23(a)(1) of the Act states that the FDIC shall have power ''to make such rules and regulations as *may* be necessary or appropriate to implement the provisions of this title for which (it is) responsible''. (Emphasis supplied.) Therefore, although section 15B(b)(2)(A) requires the MSRB to promulgate regulations addressing the qualification of persons who are or seek to be associated with bank municipal securities dealers, there is no corresponding statutory requirement imposed upon the Banking Agencies, including the FDIC. The FDIC may exercise its discretion to determine whether it is necessary or appropriate to adopt regulations such as part 343 or, in this case, to decide that such a regulation is no longer necessary or appropriate. The FDIC has determined that part 343 is no longer necessary to ensure that the requisite qualification information is provided to the state nonmember bank municipal securities dealers by persons who are or seek to be associated with the subject bank municipal securities dealers, and therefore, is proposing to rescind part 343 for the reasons discussed herein.

B. MSRB's Rule G–7 Requires the Provision of Much of the Same Information as Section 343.3

As described in Section I. Background, paragraph (b) of the MSRB's Rule G–7 requires bank municipal securities dealers to obtain certain information from persons who are or seek to be associated with them as municipal securities principals or municipal securities representatives. The MSRB's Rule G–7 provides that a form prescribed by the appropriate regulatory agency, containing the information set forth in paragraph (b), will satisfy the requirements of that paragraph. The FDIC, in cooperation with the other Banking Agencies, has created Form MSD–4s and Form MSD–5s to satisfy the requirements of paragraph (b) of MSRB Rule G–7. Although the FDIC proposes to rescind part 343, the Form MSD–4s and MSD–5s will continue to be provided to state nonmember bank municipal securities dealers to satisfy the requirements of the MSRB Rule G–7, paragraph (b) by the FDIC. The forms have detailed instructions and provide guidance regarding their completion and filing information. Additionally, the statements mandated in § 343.3 to correct information which has been previously submitted on a Form MSD–4 are required by MSRB Rule G–7, paragraph (c). Therefore, there is no need to retain this redundant regulatory requirement. Moreover, a separate recordkeeping requirement in § 343.3(d) is unnecessary because substantially similar requirements are found in MSRB Rule G–7, paragraphs (e) and (f).

C. Rescission Promotes the Long-Term Goal of Adopting the NASD's Form U and Consolidating Data Bases at the NASD

The FDIC announced in the preamble to the proposed part 343 when it was published in the **Federal Register** on March 30, 1977 (42 FR 16823) that the Banking Agencies were planning to forward the Form MSD–4s, the MSRB Rule G–7(c) statements and the Form MSD–5s that they would receive to the National Association of Securities Dealers (NASD) for computer processing. The NASD has maintained data for many years on personnel in the securities industry similar to the information disclosed about municipal securities principals and municipal securities representatives. It was expected that disciplinary and qualification data disclosed on Form MSD–4s, MSRB Rule G–7(c) statements and Form MSD–5s would be interfaced with the securities personnel data bank already maintained by the NASD. Although this integration of the two data bases has not yet been realized, the Banking Agencies' working group has again recognized this objective as a long-term goal and are working to achieve this data base integration. One of the first steps is the adoption of the NASD's Form U–4 to replace the Form MSD–4s and Form MSD–5s which the Banking Agencies currently provide to their respective constituent bank municipal securities dealers. This is an objective that the Banking Agencies' working group is continuing to pursue. Representatives, whether associated with a securities broker or dealer or a bank municipal securities dealer, are subject to the same general MSRB qualification requirements. Developing a more nearly uniform process for all municipal securities associated persons would reduce overall regulatory costs by eliminating the use of duplicative forms for individuals with dual registrations (e.g., for dual employees in bank municipal securities dealers and non-bank municipal securities dealers) and by promoting industry-wide qualification standards.

Moreover, the state nonmember bank municipal securities dealers must already be knowledgeable of and familiar with the SEC's, the MSRB's and the NASD's rules and regulations in order to comply with the bank municipal securities dealer registration requirements (section 15B(a) of the Act) and other requirements imposed upon bank and non-bank participants in the municipal securities market. The Banking Agencies' long-term goal is to have all participants in the municipal securities markets register and file required forms and information with the NASD; therefore, the FDIC believes that it is no longer necessary to maintain a separate regulation which governs a small segment of the municipal securities market participants (persons who are or seek to be associated with bank municipal securities dealers) when the informational requirements and recordkeeping requirements are already provided in the MSRB's Rule G–7. The state nonmember bank municipal securities dealers are generally familiar with Rule G–7, and look to the MSRB, the NASD and the SEC for the information filing, recordkeeping and other regulatory requirements in the municipal securities area.

D. The Number of Covered Entities is Declining

The FDIC has jurisdiction over the state nonmember bank municipal securities dealers. The FDIC has noted a steady decline in the number of state nonmember bank municipal securities dealers over the last several years. As a result of consolidation in the industry as well as the inactivity of some banks previously registered as bank municipal securities dealers (who are then requested to de-register), the number of state nonmember bank municipal securities dealers has declined to approximately 28. In the interests of efficiency and reducing duplicative regulatory requirements for this small number of covered entities, the FDIC would propose to rescind its part 343 and to have the covered bank municipal securities dealers rely upon the MSRB's Rule G–7. As discussed hereinabove, the informational requirements and recordkeeping requirements of § 343.3 of the FDIC's regulations are also found in the MSRB's Rule G–7, paragraphs (b), (c), (e) and (f).

However, the filing requirement found in paragraph (g) of Rule G–7 is dependent upon the FDIC's having a filing requirement in place. If the proposed rescission of part 343 is effected, then the requirement to file the Form MSD–4s, the MSRB Rule G–7(c) statements and the Form MSD–5s with the FDIC, as the ''appropriate regulatory agency'', will no longer exist. The corresponding filing requirement in section 17(c)(1) of the Act will also be eliminated. Section 17(c)(1) states that, ''(e)very * * * municipal securities dealer for which the (SEC) is not the appropriate regulatory agency shall * * * file with the (SEC) a copy of any application, notice, proposal, report, or document filed with such appropriate regulatory agency by reason of its being a * * * municipal securities dealer. The elimination of the filing requirement vis-a-vis the FDIC will, therefore, no longer trigger the corresponding filing of these forms with the SEC. The filing of these forms with the FDIC are for informational purposes only, the number of covered entities is very small and it is expected that in the future these informational filings will be provided to the NASD to be added to a master data base. Therefore, the FDIC believes that the deletion of this regulatory requirement will not have adverse consequences.

The forms are still required to be completed and maintained by the individual state nonmember bank municipal securities dealers and are reviewed by the FDIC during the regular examination process. The instructions to the forms provide the name and address of the appropriate regulatory agency, and direct the bank municipal securities dealer to file the requisite information with the appropriate regulatory agency. It is expected that covered entities will continue to forward the completed forms and statements to the FDIC.

E. Rescission Furthers the Goals of the CDRI Initiative

The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI (12 U.S.C. 4803(a)) requires the Banking Agencies each to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs and eliminate unwarranted constraints on credit availability. Section 303(a) also requires each of the Banking Agencies to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies. As part of this review, and in consultation with the OCC and the FRB, the FDIC has determined that part 343 is duplicative of many of the requirements of the MSRB's Rule G–7 and that certain efficiencies will be realized by having its state nonmember bank municipal securities dealers rely upon the MSRB's Rule G–7 rather than refer to and comply with part 343. The FDIC's written policies and regulations would be streamlined by its elimination.

Section 303(a)(2) of the CDRI requires the FDIC ''to work jointly with the other federal banking agencies to make uniform all regulations * * * implementing common statutory or supervisory policies.'' The FDIC and the FRB both intend to rescind their respective regulations governing the qualification requirements of the persons who are or seeking to be associated with the bank municipal securities dealers; part 343 and § 208.8(j), respectively. However, the OCC intends to retain its comparable regulation, part 10, but to add a cross-reference to the MSRB's rules. Therefore, the Banking Agencies have succeeded in moving toward the objective stated in section 303(a)(2) of the CDRI as well as accomplishing the overall goal of eliminating duplicative and unnecessary regulations.

III. Request for Public Comment

The FDIC is hereby requesting comment during a 60-day comment period on all aspects of this proposed rescission of part 343. As discussed above, the rescission of part 343 will eliminate the regulatory requirement that state nonmember bank municipal securities dealers file the Form MSD–4s, the MSRB Rule G–7(c) statements and the Form MSD–5s with the FDIC. Thus, comment is sought on whether the rescission of this filing requirement would create a regulatory gap that would have harmful effects on banking. Additionally, some have voiced concern that the state nonmember bank municipal securities dealers are accustomed to referring to the FDIC's part 343 for guidance in the municipal securities area for these informational filing and recordkeeping requirements. Will the elimination of part 343 actually result in imposing a hardship on the covered entities by deleting a handy reference source for them?

IV. Paperwork Reduction Act

The collection of information requirements (embodied in the Form MSD–4, the MSRB Rule G–7(c) statements and the Form MSD–5) contained in part 343 have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The proposed rescission of part 343 would not, however, alter the requirement under the MSRB's Rule G–7 that bank municipal securities dealers collect the prescribed information from the persons who are or seek to be associated with them as municipal securities principals or municipal securities representatives.

V. Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), the regulatory flexibility analysis otherwise required under section 603 of the RFA (5 U.S.C. 603) is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and the agency publishes such certification and a statement providing the factual basis for such certification in the **Federal Register** along with the proposed rule.

The FDIC estimates that, currently, there are 28 state nonmember bank municipal securities dealers under its jurisdiction, none of which are under $100 million in assets. The proposed rescission of part 343 would result in the elimination of duplicative and unnecessary informational requirements found in the FDIC's regulation, and allow the covered entities to refer to the MSRB's Rule G–7 requirements instead. The proposed rescission would have the effect of reducing costs and burden for the state nonmember bank municipal securities dealers. Thus, the FDIC Board

of Directors (Board) hereby certifies that the proposed rescission would not have a significant economic impact on a substantial number of small entities [1] within the meaning of the RFA. Therefore, the provisions of the RFA regarding an initial and final regulatory flexibility analysis (Id. at 603 and 604) do not apply here.

List of Subjects in 12 CFR Part 343

Banks, banking, Reporting and recordkeeping requirements, Securities.

The Board of Directors of the Federal Deposit Insurance Corporation hereby proposes to remove part 343 of title 12 of the Code of Federal Regulations.

PART 343—[REMOVED AND RESERVED]

1. Part 343 is removed and reserved.

Dated at Washington, DC this 29th day of April, 1997.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 97–12807 Filed 5–15–97; 8:45 am]

BILLING CODE 6714–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960–AE58

Administrative Review Process, Testing Elimination of the Fourth Step of Administrative Review in the Disability Claim Process (Request for Review by the Appeals Council)

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: We propose to amend our rules to establish authority to test elimination of the final step in the administrative review process used in determining claims for Social Security and Supplemental Security Income (SSI) benefits based on disability. If these proposed rules are published in final, the right of appeal for a claimant who is included in the test procedures and is dissatisfied with the decision of an administrative law judge (ALJ) would be to file a civil action in Federal district court, rather than to request the Appeals Council to review the decision. We are proposing to test procedures that eliminate the request for Appeals Council review in furtherance of the Plan for a New Disability Claim Process that former Commissioner of Social Security Chater approved in September 1994. Unless specified, all other regulations relating to the disability determination process and the administrative review process remain unchanged.

DATES: To be sure that your comments are considered, we must receive them no later than June 16, 1997.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235; sent by telefax to (410) 966–2830; sent by E-mail to ''regulations@ssa.gov''; or, delivered to the Division of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–6243 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION:

Background

The Social Security Administration (SSA) currently uses a four-step process in deciding claims for Social Security benefits under title II of the Social Security Act (the Act) and for SSI benefits under title XVI of the Act. Claimants who are not satisfied with the initial determination on their claims may request reconsideration. Claimants who are not satisfied with the reconsidered determination may request a hearing before an ALJ, and claimants who are dissatisfied with an ALJ's decision may request review by the Appeals Council. Claimants who have completed these four steps, and who are dissatisfied with the final decision, may request judicial review of the decision by filing a civil action in Federal district court. 20 CFR §§ 404.900 and 416.1400.

SSA's Plan for a New Disability Claim Process (59 FR 47887, September 19, 1994) anticipates establishment of a redesigned, two-step process for deciding Social Security and SSI claims based on disability. The redesign plan anticipates that the process for determining disability can be significantly improved by strengthening the steps of the process in which we make initial determinations and provide dissatisfied claimants an opportunity for a hearing before an ALJ, and by eliminating the reconsideration step and the step in which claimants request the Appeals Council to review the decisions of ALJs.

In 20 CFR 404.906 and 416.1406 (60 FR 20023, April 24, 1995), we have established authority to test, singly and in combination, several model procedures for modifying the disability claims process. Under that authority, we are currently testing, in isolation from other possible changes, a modification of the initial determination step in which a single decisionmaker, rather than a team composed of a disability examiner and a medical consultant, makes the initial determination of disability. In addition, under authority established in 20 CFR 404.943 and 416.1443 (60 FR 47469, September 13, 1995), we are also testing, in another model for evaluating a possible change in isolation from other changes, use of an adjudication officer as the focal point for all prehearing activities in disability cases in which a claimant requests a hearing before an ALJ.

To assess how the above changes and other elements of the disability redesign plan would work together in different combinations, we initiated an integrated test on April 7, 1997, that combines model procedures for major elements of the redesign plan. As presently structured under existing testing authority (established in §§ 404.906, 404.943, 416.1406, and 416.1443 in combination), this integrated model includes, in addition to models for the single decisionmaker and the adjudication officer, a model for procedures to provide a predecision interview conducted by the single decisionmaker (at which a claimant for benefits based on disability will have an opportunity to submit further evidence and have an interview with the initial decisionmaker if the evidence does not support a fully favorable initial disability determination), and a model to test eliminating the reconsideration step in disability claims.

In order to increase our ability to assess the effects of possible modifications of the disability claim process in combination, we are proposing in these rules to amend our regulations to authorize testing of an additional modification in our integrated model. We are proposing to incorporate in this model additional

[1] The definition of ''small business entity'' derives from the definition of a ''small business concern.'' Part 121 of the Small Business Administration's rules and regulations (13 CFR part 121) provides that any national bank or commercial bank, savings association, or credit union with assets of $100 million or less qualifies as a small business concern.

procedures to test elimination of the step in that process in which a claimant requests the Appeals Council to review the hearing decision of an ALJ.

Under the proposed rules, we will randomly select approximately one half of the requests for an ALJ hearing in the integrated model for potential inclusion in the proposed test procedures. The remaining requests for hearing in the integrated model will be processed under our existing regulations concerning the Appeals Council and judicial review. This will enable us to assess other modifications tested in the integrated model in association with both the proposed test procedures for eliminating the request for Appeals Council review step and our existing request for review procedures.

Under the proposed rules, we will eliminate the request for review step (which has been established by agency regulations and is not mandated by the Act) in a case in the integrated model if: (1) The case has been randomly selected for inclusion in this aspect of the model, and (2) an ALJ issues a decision in the case that is less than wholly favorable to the claimant (i.e., unfavorable or only partially favorable to the claimant). Cases in the integrated model in which an ALJ issues a wholly favorable decision, dismisses a request for hearing, or issues a recommended decision will not be included in the proposed procedures. These cases will be processed under our existing regulations concerning the Appeals Council and judicial review.

In a case to which the proposed rules apply, the appeal available to the claimant from the ALJ's decision will be filing an action in Federal district court. Requesting review by the Appeals Council will be eliminated as an appeal and as a prerequisite to seeking judicial review.

Our specific goals in testing elimination of the request for review step will be to assess the effects of this change, as it functions in conjunction with other modifications in the disability claim process included in the integrated model, on: (1) Judicial workloads, and (2) the legal sufficiency of decisions subjected to judicial review. We consider the effects of the change in those respects to represent the principal, practical issues bearing on the advisability of eliminating the request for review step in connection with the planned, overall redesign of the disability claim process.

SSA's disability redesign plan anticipates that the request for Appeals Council review will be eliminated in conjunction with the establishment of procedures to increase the number of ALJ decisions that the Council will consider for quality review purposes under its authority to review cases on its own motion. We are not including procedures to test the enhanced own-motion functions anticipated for the Appeals Council in these proposed rules. We are not including such procedures because we wish to concentrate the proposed test on producing information concerning the effects of eliminating the request for Appeals Council review on judicial workloads and the legal sufficiency of SSA's final decisions. In addition, we are preparing to propose permanent rules to regulate existing procedures and establish new procedures for referring cases to the Appeals Council for possible review under its own-motion authority. Those proposed changes should provide, if adopted in final, increased information regarding own-motion review by the Council.

We propose to test the effect of eliminating the request for review step on judicial workloads by comparing the rate at which civil actions are filed by individuals whose claims are processed under the current administrative review steps in the disability claims process—i.e., the four step process—to the rate at which civil actions are filed in cases selected for processing under the proposed test procedures. We will also consider the rate at which civil actions are filed in cases in the integrated model in which we retain the request for Appeals Council review.

We propose to assess the effect of eliminating the request for review on the legal sufficiency of final decisions by comparing the rates at which, following the filing of civil actions in cases included in the integrated model and in a control sample of cases processed under the current administrative review steps in the disability claims process, we request court-remand of a case within the period during which the Commissioner of Social Security may file his answer to a civil action under § 205(g) of the Act. The Appeals Council, working with agency counsel, will evaluate the claims in the integrated model and in the control sample to identify instances in which a court should be requested (as courts may be under existing procedures) to remand a case for further administrative action.

We believe that, in conjunction with other modifications we are testing in the integrated model, elimination of the request for review step could have a significant beneficial effect on the disability claims process and on our ability to adjudicate claims timely and accurately. We place a high priority on speedily including a test of the elimination of that step in our integrated model. The proposed rules have the limited purpose of authorizing test procedures in a relatively small number of cases (projected at approximately 1900) to determine how elimination of the request for review step could affect judicial workloads and the legal sufficiency of the agency's final decisions. If we ultimately decide to proceed with elimination of this step, we would publish a Notice of Public Rulemaking setting forth detailed proposals concerning all the changes that would be made in the administrative review process to eliminate the request for review by the Appeals Council. Therefore, and because we have previously provided the public with the opportunity to comment on all aspects of our basic disability redesign plan, including the elimination of the request for review step, we are providing a 30-day comment period for these proposed rules rather than the 60-day period we usually provide. We believe that a 30-day comment period is sufficiently long, in this instance, to allow the public a meaningful opportunity to comment on the proposed rules in accordance with Executive Order (E.O) 12866.

Proposed Regulations

We propose to add new §§ 404.966 and 416.1466 to set forth authority to test elimination of the step in the administrative review process in which claimants for benefits based on disability request the Appeals Council to review the decision of an ALJ. The proposed rules specify in §§ 404.966(a) and 416.1466(a) that testing of elimination of the request for review step will be conducted in randomly selected cases in which we have tested a combination of model procedures for modifying the disability claim process as authorized in §§ 404.906, 404.943, 416.1406 and 416.1443, and an ALJ has issued a decision that is less than wholly favorable to the claimant.

Under proposed §§ 404.966(b) and 416.1466(b), which describe the effect of an ALJ's decision, the ALJ's decision will be binding unless a party to the decision files a civil action, the Appeals Council reviews the decision on its own motion under the authority provided in 20 CFR 404.969 and 416.1469, or the decision is revised by the administrative law judge or the Appeals Council under the rules on reopening final decisions in 20 CFR 404.987 and 416.1487. Under these provisions, the appeal available to a party who is dissatisfied with the decision of an ALJ will be to seek judicial review. As is true of the

provisions of proposed §§ 404.966 and 416.1466 as a whole, the proposed provisions of §§ 404.966(b) and 416.1466(b) pertain only to those ALJ decisions that have been identified for inclusion in that part of our integrated model in which the request for review by the Appeals Council is eliminated.

Proposed §§ 404.966(c) and 416.1466(c) describe the notice an ALJ will issue to advise a party to a decision included in this part of the integrated model of the right to file a civil action. Proposed §§ 404.966(d) and 416.1466(d) describe the right a party will have to request the Appeals Council to grant an extension of time to file a civil action.

Electronic Version

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 a.m. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under E.O. 12866. Thus, they are not subject to OMB review.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These regulations impose no new reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

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

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: May 7, 1997.

John J. Callahan,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, subpart J of part 404 and subpart N of part 416 of chapter III of title 20 of the Code of Federal Regulations are proposed to be amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

20 CFR part 404, Subpart J, is amended as follows:

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

Authority: Secs. 201(j), 205 (a), (b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 405 (a), (b), (d)–(h), and (j), 421, 425, and 902(a)(5)); 31 U.S.C. 3720A; sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6 (c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

2. New § 404.966 is added under the undesignated center heading ''APPEALS COUNCIL REVIEW'' to read as follows:

§ 404.966 Testing elimination of the request for Appeals Council review.

(a) *Applicability and scope.* Notwithstanding any other provision in this part or part 422 of this chapter, we are establishing the procedures set out in this section to test elimination of the request for review by the Appeals Council. These procedures will apply in randomly selected cases in which we have tested a combination of model procedures for modifying the disability claim process as authorized under §§ 404.906 and 404.943, and an administrative law judge has issued a decision (not including a recommended decision) that is less than wholly favorable to you.

(b) *Effect of an administrative law judge's decision.* In a case to which the procedures of this section apply, the decision of an administrative law judge will be binding on all the parties to the hearing unless —

(1) You or another party file an action concerning the decision in Federal district court;

(2) The Appeals Council decides to review the decision on its own motion under the authority provided in § 404.969; or

(3) The decision is revised by the administrative law judge or the Appeals Council under the procedures explained in § 404.987.

(c) *Notice of the decision of an administrative law judge.* The notice of decision the administrative law judge issues in a case processed under this section will advise you and any other parties to the decision that you may file an action in a Federal district court within 60 days after the date you receive notice of the decision.

(d) *Extension of time to file action in Federal district court.* Any party having a right to file a civil action under this section may request that the time for filing an action in Federal district court be extended. The request must be in writing and it must give the reasons why the action was not filed within the stated time period. The request must be filed with the Appeals Council. If you show that you had good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, we will use the standards in § 404.911.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

20 CFR Part 416, Subpart N, is amended as follows:

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

Authority: Sec. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b).

2. New § 416.1466 is added under the undesignated center heading ''APPEALS COUNCIL REVIEW'' to read as follows:

§ 416.1466 Testing elimination of the request for Appeals Council review.

(a) *Applicability and scope.* Notwithstanding any other provision in this part or part 422 of this chapter, we are establishing the procedures set out in this section to test elimination of the request for review by the Appeals Council. These procedures will apply in randomly selected cases in which we have tested a combination of model procedures for modifying the disability claim process as authorized under §§ 416.1406 and 416.1443, and an administrative law judge has issued a decision (not including a recommended decision) that is less than wholly favorable to you.

(b) *Effect of an administrative law judge's decision.* In a case to which the procedures of this section apply, the decision of an administrative law judge will be binding on all the parties to the hearing unless —

(1) You or another party file an action concerning the decision in Federal district court;

(2) The Appeals Council decides to review the decision on its own motion under the authority provided in § 416.1469; or

(3) The decision is revised by the administrative law judge or the Appeals Council under the procedures explained in § 416.1487.

(c) *Notice of the decision of an administrative law judge.* The notice of decision the administrative law judge issues in a case processed under this section will advise you and any other parties to the decision that you may file an action in a Federal district court within 60 days after the date you receive notice of the decision.

(d) *Extension of time to file action in Federal district court.* Any party having a right to file a civil action under this section may request that the time for filing an action in Federal district court be extended. The request must be in writing and it must give the reasons why the action was not filed within the stated time period. The request must be filed with the Appeals Council. If you show that you had good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, we will use the standards in § 416.1411.

[FR Doc. 97–12938 Filed 5–15–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Parts 718, 722, 725, 726 and 727

[RIN 1215–AA99]

Regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as Amended; Extension of Comment Period; Additions to the Record

AGENCY: Employment Standards Administration, Labor.

ACTION: Proposed rule; extension of comment period; additions to the record.

SUMMARY: This document extends the period for filing comments regarding the proposed rule to amend and revise the regulations implementing the Black Lung Benefits Act. This action is taken to permit additional comment from interested persons. In addition, this document informs all interested persons that the Department is adding three medical articles to the official rulemaking record and invites comments on those articles.

DATES: Comments must be received on or before August 21, 1997.

ADDRESSES: Send written comments on the proposed rule to James L. DeMarce, Director, Division of Coal Mine Worker's Compensation, Room C–3520, Frances Perkins Building, 200 Constitution Ave., NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James L. DeMarce, (202) 219–6692.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 22, 1997 (62 FR 3338–3435), the Department of Labor published a proposed rule intended to amend and revise the regulations implementing the Black Lung Benefit Act, subchapter IV of the Federal Coal Mine Health and Safety Act of 1969, as amended. Interested persons were requested to submit comments on or before March 24, 1997. In the **Federal Register** of February 24, 1997 (62 FR 8201), the Department extended the comment period through May 23, 1997. The trade association representing coal mine operators has requested that the Department once again extend the comment period. The trade association seeks additional time to analyze existing medical evidence and submit its analysis to peer review. The Department deems it desirable to extend the comment period for all interested persons. Therefore, the comment period for the proposed rule, amending and revising 20 CFR Parts 718, 722, 725, 726 and 727, is extended through August 21, 1997.

In addition, following publication of the proposed rule, the Department learned of three medical articles relevant to its proposed revision of the definition of the term ''pneumoconiosis'' at 20 CFR 718.201. *See* 62 FR 3343–44 (discussion), 3376 (definition). Those articles are: Becklake, M., ''Occupational Exposures: Evidence for a Causal Association with Chronic Obstructive Pulmonary Disease,'' American Review of Respiratory Disease, 140: S85–S91, 1989; ''Coal Dust and Compensation,'' The Lancet, Vol. 335, No. 8685, pp. 322–324 (Feb. 10, 1990); and Wright, J. *et al.*, ''State of the Art: Diseases of the Small Airways,'' American Review of Respiratory Diseases, 146: 240–262, 1992. The Department gives notice of its inclusion of these articles in the official rule-making record, and invites comments on them. Copies of the articles may be reviewed at the Department of Labor.

Signed at Washington, D.C. this 5th day of May, 1997.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

[FR Doc. 97–12324 Filed 5–15–97; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 181

RIN 1076–AD82

Indian Highway Safety Program Competitive Grant Selection Criteria

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) intends to make funds available to federally recognized tribes on an annual basis for financing tribal highway safety projects designed to reduce the incidence of traffic accidents within Indian country. Due to the limited funding available for the Indian Highway Safety Program, the BIA will review and select from proposed tribal projects on a competitive basis. The proposed rule presents the selection criteria.

DATES: Comments must be postmarked by July 15, 1997.

ADDRESSES: Comments should be sent to Program Administrator, Indian Highway Safety Program, 505 Marquette Avenue, NW, Suite 1705, Albuquerque, NM 87102.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Jaynes, Chief, BIA Division of Safety Management, (505) 248–5060.

SUPPLEMENTARY INFORMATION: This proposed rule sets forth the procedures that will govern the BIA's selection of recipients of the Indian Highway Safety Program grant. The BIA mails grant applications for a given fiscal year to all tribal leaders by the end of February of the preceding fiscal year. Applicants must submit completed applications by the close of business on June 1. The BIA will review and evaluate each complete and timely filed application. BIA seeks to fund as many programs as possible and to the level practicable within the confines of a limited program budget. The scarce amount of resources often forces the BIA to limit funding to select portions of a proposed tribal project.

We are publishing this proposed rule by the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Our policy is to give the public an opportunity to participate in the rulemaking process. Interested persons may submit written comments to the location identified in the **ADDRESSES** section of the preamble. We will consider all comments timely filed during the public comment period, make any necessary revisions and issue the final rule.

We certified to the Office of Management and Budget (OMB) that this proposed rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. This proposed rule is not a significant rule under Executive Order 12866 and does not require approval by the OMB. This proposed rule does not constitute a major Federal action significantly affecting the human environment and, therefore, no detailed statement is needed under the National Environmental Policy Act of 1969. Furthermore, this proposed rule does not have significant takings implications in accordance with Executive Order 12630, does not have significant Federalism effects, and does not have a significant economic impact of a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Act of 1996

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

Paperwork Reduction Act of 1995

Under 23 U.S.C. 402, the Department of Transportation (DOT) funds both the DOT State Highway Safety Program and the BIA Indian Highway Safety Program. The information contained in each grant application under both programs is identical. The Indian Highway Safety Program competitive grant application solicits only the information DOT requires for its State Highway Safety Program and uses it for substantially the same purpose of awarding Highway Safety Program funds to applicants. OMB has reviewed and approved the information collection requirements for the DOT State Highway Safety Program. See OMB Control Number 2127–0003. No additional OMB authorization is needed.

The primary author of this document is Lawrence Archambeau, Bureau of Indian Affairs.

List of Subjects in 25 CFR Part 181

Indians, Highways and roads, Highway safety.

For the reasons set forth in the preamble, Part 181 is proposed to be added to 25 CFR subchapter H as follows:

PART 181—INDIAN HIGHWAY SAFETY PROGRAM

Sec.

Authority: 23 U.S.C. 402; 25 U.S.C. 13.

§ 181.01 Purpose.

This part will assist the BIA Indian Highway Safety Program Administrator to disperse funds DOT/NHTSA has made available. The funds assist selected tribes with their proposed Highway Safety Projects. These projects are designed to reduce traffic crashes, reduce impaired driving crashes, increase occupant protection education, provide Emergency Medical Service training, and increase police traffic services.

§ 181.02 Definitions.

Appeal means a written request for review of an action or the inaction of an official of the BIA that is claimed to adversely affect the interested party making the request.

Applicant means an individual or persons on whose behalf an application for assistance and/or services has been made under this part.

Application means the process through which a request is made for assistance or services.

Grant means a written agreement between the BIA and the governing body of an Indian tribe or Indian organization wherein the BIA provides funds to the grantee to plan, conduct, or administer specific programs, services, or activities and where the administrative and programmatic provisions are specifically delineated.

Grantee means the tribal governing body of an Indian tribe or Board of Directors of an Indian organization responsible for grant administration.

Recipient means an individual or persons who have been determined as eligible and are receiving financial assistance or services under this part.

§ 181.03 Am I eligible to receive a program grant?

The Indian Highway Safety Program grant is available to any federally recognized tribe. Because of the limited financial resources available for the program, the Bureau of Indian Affairs (BIA) is unable to award grants to all applicants. Furthermore, some grant recipients may only be awarded a grant to fund certain aspects of their proposed tribal projects.

§ 181.04 How do I obtain an application?

BIA mails grant application packages for a given fiscal year to all federally recognized tribes by the end of February of the preceding fiscal year. Additional application packages are available from the Program Administrator, Indian Highway Safety Program, P.O. Box 2003, Albuquerque, New Mexico 87103. Each application package contains the necessary information concerning the application process, including format, content, and filing requirements.

§ 181.05 How are applications ranked?

BIA ranks each timely filed application by assigning points based upon four factors.

(a) Factor No. 1—Magnitude of the problem (Up to 50 points available). In awarding points under this factor, BIA will take into account the following:

(1) Whether a highway safety problem exists.

(2) Whether the problem is significant.

(3) Whether the proposed tribal project will contribute to resolution of the identified highway safety problem.

(4) The number of traffic accidents occurring within the applicant's jurisdiction over the previous 3 years.

(5) The number of alcohol-related traffic accidents occurring within the applicant's jurisdiction over the previous 3 years.

(6) The number of reported traffic fatalities occurring within the applicant's jurisdiction over the previous 3 years.

(7) The number of reported alcohol-related traffic fatalities occurring within the applicant's jurisdiction over the previous 3 years.

(b) Factor No. 2—Countermeasure selection (Up to 40 points available). In awarding points under this factor, BIA will take into account the following:

(1) Whether the countermeasures selected are the most effective for the identified highway safety problem.

(2) Whether the countermeasures selected are cost effective.

(3) Whether the applicant's objectives are realistic and attainable.

(4) Whether the applicant's objectives are time framed and, if so, whether the time frames are realistic and attainable.

(c) Factor No. 3—Tribal leadership and community support (Up to 10 points available). In awarding points under this factor, BIA will take into account the following:

(1) Whether the applicant proposes using tribal resources in the project.

(2) Whether the appropriate tribal governing body supports the proposal plan, as evidenced by a tribal resolution or otherwise.

(3) Whether the community supports the proposal plan, as evidenced by letters or otherwise.

(d) Factor No. 4—Past performance (+ or − 10 points available). In awarding points under this factor, BIA will take into account the following:

(1) Financial and programmatic reporting requirements.

(2) Project accomplishments.

§ 181.06 How are applicants informed of the results?

BIA will send a letter to all applicants notifying them of their selection or non-selection for participation in the Indian Highway Safety Program for the upcoming fiscal year. BIA will explain to each applicant not selected for participation the reason(s) for non-selection.

§ 181.07 Appeals.

You may appeal actions taken by BIA officials under this part by following the procedures in 25 CFR part 2.

Dated: May 6, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–12935 Filed 5–15–97; 8:45 am]

BILLING CODE 4310–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300486A; FRL–5719–2]

RIN AC18

Bromoxynil; Pesticide Tolerances; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: Notice is hereby given that the period for filing public comment on the proposed tolerances for bromoxynil and its metabolite DBHA on cotton commodities, and for bromoxynil on animal commodities is extended.

DATES: Public comments must be received on or before May 26, 1997.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information and Resources Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Tompkins, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697; e-mail: tompkins.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 2, 1997 (62 FR 24065) (FRL–5617–5), EPA issued a Notice of Proposed Rulemaking for establishment of tolerances for residues of the herbicide bromoxynil and its metabolite DBHA on cotton commodities; for establishment of tolerances for residues of bromoxynil on poultry commodities (including eggs); and for revision of tolerances for residues of bromoxynil on other meat commodities and milk. Written comments on the proposed rule were to be received on or before May 19, 1997. On May 6, 1997, the Union of Concerned Scientists and the Environmental Defense Fund requested that EPA extend this comment period from 17 to 60 days.

Under section 408(e) of the FFDCA, EPA is required to provide a 60–day comment period on proposed rules unless EPA finds for good cause that it would be in the public interest to provide a shorter period. EPA shortened the comment period on the bromoxynil tolerances to 17 days based on the fact that previous notice had been provided on the central issue of establishing a tolerance permitting use of bromoxynil on cotton, and cotton growers faced a potential hardship if a decision is not made expeditiously.

In their request for an extension of the comment period, the Union of Concerned Scientists and the Environmental Defense Fund cited a number of health issues and questions regarding interpretation of the FFDCA safety standard. EPA does not believe these groups have shown that it is not in the public interest to shorten the comment period. EPA also does not think that the groups have demonstrated that the comment period is inadequate to address the issues they have raised. Nonetheless, EPA will extend the comment period for an additional 7 days. Comments will now be due on or before May 26, 1997.

II. Public Docket

The official record for the proposed rule, as well as the public version, has been established for the proposal under docket control number ''OPP–300486'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPP–300486. Electronic comments on the proposed rule may be filed online at many Federal Depository Libraries.

List of Subjects in 40 CFR Part 180

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

Dated: May 12, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–13047 Filed 5-15-97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1039

[Ex Parte No. 346 (Sub–No. 36)]

Rail General Exemption Authority—Exemption of Nonferrous Recyclables and Railroad Rates on Recyclable Commodities

AGENCY: Surface Transportation Board, Transportation.

ACTION: Proposed rule, withdrawal.

SUMMARY: The Surface Transportation Board is discontinuing the rulemaking in Ex Parte No. 346 (Sub-No. 36).

DATES: This withdrawal is made on May 5, 1997.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking (NPR) in this proceeding served on August 23, 1994, and published in the **Federal Register** on August 24, 1994 (59 FR 43529), the Interstate Commerce Commission (ICC) solicited comments on a proposal to exempt partially from regulation the rail transportation of 28 nonferrous recyclable commodities. After the issuance of the NPR, the ICC Termination Act of 1995 (ICCTA), Pub. L. No. 104–88, 109 Stat. 803 was enacted. The ICCTA significantly changed the basis for the NPR by eliminating former 49 U.S.C. 10731(e). Consequently, in *Rail General Exemption Authority—Nonferrous Recyclables, STB Ex Parte* No. 561 (published elsewhere in this section of the **Federal Register**), we are issuing a new NPR proposing a total exemption from regulation for 29 nonferrous recyclable commodities. Because we will consider a broader exemption in STB Ex Parte No. 561, we are discontinuing this proceeding. The comments previously filed in response to the NPR will be made part of the record in STB Ex Parte No. 561 and need not be refiled.

Decided: April 24, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–12949 Filed 5–15–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1039

[STB Ex Parte No. 561]

Rail General Exemption Authority—Nonferrous Recyclables

AGENCY: Surface Transportation Board, Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Interstate Commerce Commission (ICC) issued a notice of proposed rulemaking (NPR) in Ex Parte No. 346 (Sub-No. 36) on August 23, 1994, published in the **Federal Register** on August 24, 1994, to consider whether to exempt partially from regulation the rail transportation of certain nonferrous recyclables. The ICC Termination Act of 1995 significantly changed the basis for that notice. Consequently, we are issuing a new NPR proposing a total exemption from regulation for 29 nonferrous recyclable commodities. We are also announcing a policy for the interim to govern the 11 nonferrous recyclable commodities that were previously partially exempted. Finally, in a separate decision served today, Ex Parte No. 346 (Sub-No. 36) is being discontinued.

DATES: Persons interested in participating in this proceeding as a party of record by filing and receiving written comments must file a notice of intent to participate by May 26, 1997. We will issue a service list of the parties of record shortly thereafter. Comments and replies must be served on all parties of record. Comments are due on June 30, 1997 and replies are due on July 15, 1997.

ADDRESSES: Send an original plus 10 copies of notices of intent to participate and pleadings referring to STB Ex Parte No. 561 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: The Board's decision proposing these regulations is available to all persons for a charge by phoning DC NEWS & DATA, INC., at (202) 289–4357.

Environmental and Energy Considerations

We preliminarily conclude that, if an exemption is granted, it will not significantly affect either the quality of the human environment or the conservation of energy resources. We invite comments in this area.

Initial Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 605(b), the Board preliminarily concludes that an exemption would not have a significant economic impact on a substantial number of small entities. No new regulatory requirements would be imposed, directly or indirectly, on such entities. The impact, if any, would be to reduce the amount of paperwork and regulation. If an exemption were granted, it would be based partly on a finding that regulation of this transportation is not necessary to protect shippers (including small shippers) from abuse of market power. *See* 49 U.S.C. 10502. Such a finding, if made, would indicate that a substantial number of small entities would not be significantly affected. We invite comments in this area.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Decided: April 24, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, Part 1039 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1039—EXEMPTIONS

1. The authority citation for Part 1039 continues to read as follows:

Authority: 5 U.S.C. 553; and 49 U.S.C. 10502 and 13301.

2. In § 1039.11, paragraph (a) is proposed to be amended by adding the following entries in numerical order to the table and by revising the first sentence to the undesignated text following the table to read as follows:

§ 1039.11 Miscellaneous commodities exemptions.

(a) * * *

STCC No.	STCC tariff	Commodity
		* * * * *
20511	6001–X, eff .. 1–1–96.	Bread or other bakery products exc. biscuits, crackers, pretzels or other dry bakery products See 20521–20529.
22941	.....do	Textile waste, garnetted, processed, or recovered or recovered fibres or flock exc. packing or wiping cloths or rags. See 22994.

STCC No.	STCC tariff	Commodity
22973	.....do	Textile fibres, laps, noils, nubs, roving, sliver or slubs, prepared for spinning, combed or converted.
22994	.....do	Packing or wiping cloths or rags (processed textile wastes).
24293	.....do	Shavings or sawdust.
30311	.....do	Reclaimed rubber.
3229924	.....do	Cullet (broken glass).
33312	.....do	Copper matte, speiss, flue dust, or residues, etc.
33322	.....do	Lead matte, speiss, flue dust, dross, slag, skimmings, etc.
33332	.....do	Zinc dross, residues, ashes, etc.
33342	.....do	Aluminum residues, etc.
33398	.....do	Misc. nonferrous metal residues, including solder babbitt or type metal residues.
40112	.....do	Ashes.
40212	.....do	Brass, bronze, copper or alloy scrap, tailings, or wastes.
40213	.....do	Lead, zinc, or alloy scrap, tailings or wastes.
40214	.....do	Aluminum or alloy scrap, tailings or wastes.
4021960	.....do	Tin scrap, consisting of scraps or pieces of metallic tin, clippings, drippings, shavings, turnings, or old worn-out block tin pipe having value for remelting purposes only.
40221	.....do	Textile waste, scrap or sweepings.
40231	.....do	Wood scrap or waste.
40241	.....do	Paper waste or scrap.
40251	.....do	Chemical or petroleum waste, including spent.
40261	.....do	Rubber or plastic scrap or waste.
4029114	.....do	Municipal garbage waste, solid, digested and ground, other than sewage waste or fertilizer.
4029176	.....do	Automobile shredder residue.
4111434	.....do	Bags, old, burlap, gunny, istle (ixtle), jute, or sisal, NEC.
41115	.....do	Articles, used, returned for repair or reconditioning.
42111	.....do	Nonrevenue movement of containers, bags, barrels, bottles, boxes, crates, cores, drums, kegs, reels, tubes, or carriers, NEC, empty, returning in reverse of route used in loaded movement, and so certified.
42112	.....do	Nonrevenue movement of shipping devices, consisting of blocking, bolsters, cradles, pallets, racks, skids, etc., empty, returning in reverse of route used in loaded movement, and so certified
42311	.....do	Revenue movement of containers, bags, barrels, bottles, boxes, crates, cores, drums, kegs, reels, tubes, or carriers, NEC., empty, returning in reverse of route used in loaded movement and so certified.

Also excepted from this exemption are those commodities previously exempt, and any transportation service regarding which the Commission has made a finding of market dominance.

* * *

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[FR Doc. 97–12951 Filed 5–15–97; 8:45 am]

BILLING CODE 4915–00–P

Notices

Federal Register
Vol. 62, No. 95
Friday, May 16, 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

Intent to Extend a Currently Approved Information Collection Survey

AGENCY: Policy Analysis and Coordination Center, Human Resources Management, USDA.

FORMAT: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, dated August 29, 1995), this notice announces the Policy Analysis and Coordination Center, Human Resources Management's (PACC–HRM), intention to request an extension of a currently approved information collection survey, the U.S. Department of Agriculture Applicant Supplemental Sheet.

DATES: Comments on this notice must be received by June 29, 1997, to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Mary Ann Jenkins, PACC–HRM, U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Washington, D.C. 20250–9603, (202) 720–0515.

SUPPLEMENTARY INFORMATION:

Title: U.S. Department of Agriculture Applicant Supplemental Sheet.

OMB Number: 0505–0009

Expiration Date of Approval: June 30, 1997.

Type of Request: Intent to extend a currently approved information collection.

Abstract: The Equal Employment Opportunity Commission (EEOC) requires federal agencies to measure or otherwise keep statistics regarding the extent to which recruitment efforts result in increased protected class applicant flow. PACC–HRM devised and implemented a means for collecting such data on a nationwide basis. The collection form, AD–1086, has been used to capture applicant data. These data are used by U.S. Department of Agriculture for various reports such as Affirmative Action Plan and Report of Accomplishments for the Hiring, Placement, and Advancement of Persons with Disabilities as required by EEOC Management Directive (MD) 714.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Individuals or Federal employees.

Estimated Number of Respondents: 50,000.

Estimated Total Annual Burden on Respondents: 4,000 hours.

Copies of this collection and related information can be obtained without charge from Larry Roberson, the Agency OMB Clearance Officer, at (202) 720–6204.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Roberson, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Room 409–W, Jamie L. Whitten Federal Building, Washington, D.C. 20250–7602.

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.

Roger L. Bensey,

Director of Human Resources Management.

[FR Doc. 97–12922 Filed 5–15–97; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of Intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Callaway Chemical Company of Columbus, Georgia, a coexclusive license with FMC Corporation and Rohm and Haas Company for U.S. Patent No. 4,820,307 issued April 11, 1989, U.S. Patent No. 4,936,865 issued June 26, 1990, and U.S. Patent No. 4,975,209 issued December 4, 1990, all entitled ''Catalysts and Processes for Formaldehyde-Free Durable Press Finishing of Cotton Textiles with Polycarboxylic Acids'', and U.S. Patent No. 5,221,285 issued June 22, 1993, entitled ''Catalysts and Processes for Formaldehyde-Free Durable Press Finishing of Cotton Textiles with Polycarboxylic Acids, and Textiles Made Therewith.'' Notice of Availability for U.S. Patent No. 4,820,307 was published in the **Federal Register** on September 22, 1988. U.S. Patent Nos. 4,936,865 and 4,975,209 are divisions of U.S. Patent No. 4,820,307, and U.S. Patent No. 5,221,285 is a continuation-in-part of U.S. Patent No. 4,975,209.

DATES: Comments must be received on or before July 15, 1997.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Callaway Chemical Company has submitted a complete and sufficient application for a license. The prospective coexclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. the prospective coexclusive license may be granted

unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 97–12921 Filed 5–15–97; 8:45 am]

BILLING CODE 3410–03–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Criteria for Evaluating Market Development Proposals for Participation in the Foreign Market Development Cooperator Program

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Foreign Agricultural Service (FAS) has developed approval criteria and weighting factors for allocating funds on a competitive basis under the Foreign Market Development Cooperator Program. FAS invites suggestions and comments regarding these proposed factors.

DATES: In order to be considered, written comments must be received by June 16, 1997.

ADDRESSES: Send comments to U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250–1042.

FOR FURTHER INFORMATION CONTACT: The Marketing Operations Staff at (202) 720–4327.

SUPPLEMENTARY INFORMATION:

Background

The Foreign Market Development Cooperator (Cooperator) Program is authorized by Title VII of the Agricultural Trade Act of 1978, 7 U.S.C. 5721, *et seq.* The program is intended to create, expand and maintain foreign markets for United States agricultural commodities and products. The Foreign Agricultural Service (FAS) administers the Cooperator Program and provides cost share assistance to eligible trade organizations to carry out approved market development activities. Program regulations appear at 7 CFR part 1550. Under the Cooperator Program, FAS enters into Market Development Project Agreements with nonprofit U.S. trade organizations or associations of State Departments of Agriculture. FAS enters into agreements with those nonprofit U.S. trade organizations that have the broadest possible producer representation of the commodity being promoted and gives priority to those organizations that are nationwide in membership and scope. Program participants may not, during the term of their agreement with FAS, make export sales of the agricultural commodity being promoted or charge fees for facilitating an export sale if promotional activities designed to result in that specific sale are supported by Cooperator program funds.

Market Development Project Agreements involve the promotion of agricultural commodities on a generic basis and, therefore, do not involve activities targeted directly toward individual consumers. Approved activities contribute to the maintenance or growth of demand for the agricultural commodities and generally address long-term foreign import constraints by focusing on matters such as:

—Reducing infra-structural or historical market impediments;
—Improving processing capabilities;
—Modifying codes and standards; and
—Identifying new markets or new applications or uses for the agricultural commodity or product in the foreign market.

Approval Criteria

FAS allocates funds in a manner that effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993. In deciding whether a proposed project will contribute to the effective creation, expansion or maintenance of foreign markets, FAS seeks to identify a clear, long-term agricultural trade strategy by market or product and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country goals. These performance indicators are part of FAS's resource allocation strategy to fund applicants which can demonstrate performance based on a long-term strategic plan, consistent with the strategic objectives of the United States Department of Agriculture's Long-term Agricultural Trade Strategy, and address the performance measurement objectives of the GPRA.

FAS considers a number of factors when reviewing proposed projects. These factors include:

—The ability of the organization to provide an experienced U.S.-based staff with technical and international trade expertise to ensure adequate development, supervision and execution of the proposed project;
—The organization's willingness to contribute resources including cash and goods and services of the U.S. industry and foreign third parties;
—The conditions or constraints affecting the level of U.S. exports and market share for the agricultural commodities and products;
—The degree to which the proposed project is likely to contribute to the creation, expansion, or maintenance of foreign markets; and
—The degree to which the strategic plan is coordinated with other private or U.S. government-funded market development projects.

Allocation Criteria

The purpose of this notice is to obtain comments from interested parties regarding a proposed method of evaluating the relative merits of different proposals for the purpose of determining an appropriate funding level for each proposed project. Meritorious proposals will compete for funds on the basis of the following allocation criteria (the numbers in parentheses represent a percentage weight factor). Data used in the calculations for contribution levels, past export performance and past demand expansion performance will cover not more than a 6-year period, to the extent such data is available.

(a) Contribution Level (40)

- The applicant's 6-year average share of all contributions (contributions may include cash and goods and services provided by U.S. entities in support of foreign market development activities) compared to
- The applicant's 6-year average share of all Cooperator marketing plan budgets.

(b) Past Export Performance (20)

- The 6-year average share of the value of exports promoted by the applicant across Cooperator Program targeted markets compared to
- The applicant's 6-year average share of all Cooperator marketing plan budgets plus a 6-year average share of Market Access Program (MAP) program ceiling levels and a 6-year average share of foreign overhead provided for co-location within a U.S. agricultural trade office in those targeted markets.

(c) Past Demand Expansion Performance (20)

- The 6-year average share of the total value of world imports of the commodities promoted by the applicant across Cooperator Program targeted markets compared to

• The applicant's 6-year average share of all Cooperator marketing plan budgets plus a 6-year average share of MAP program ceiling levels and a 6-year average share of foreign overhead provided for co-location within a U.S. agricultural trade office in those targeted markets.

(d) Future Demand Expansion Goals (20)

(This criterion will receive a weight of 10 beginning with the year 2000 program)

• The total dollar value of the applicant's projected world imports of the commodities being promoted by the applicant for the year 2003 across all Cooperator Program targeted markets compared to

• The applicant's requested funding level.

(e) Accuracy of Past Demand Expansion Projections

(Since the information is not currently available, this criterion will be used beginning with the year 2000 program and will receive a weight of 10)

• The actual dollar value share of world imports of the commodities being promoted by the applicant for the year 1998 across all Cooperator Program targeted markets compared to

• The applicant's past projected share of world imports of the commodities being promoted by the applicant for the year 1998, as specified in the 1998 Cooperator Program application.

The Commodity Division's recommended program levels for each applicant are converted to a percent of the total Cooperator Program funds available and multiplied by the total weight factor to determine the amount of funds allocated to each applicant.

Dated: May 6, 1997.

Timothy J. Galvin,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 97–12836 Filed 5–15–97; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Snowbird Ski and Summer Resort Master Development Plan, Wasatch-Cache National Forest, Salt Lake Ranger District, Salt Lake County, Utah and Uinta National Forest, Pleasant Grove Ranger District, Utah County, Utah

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Forest Service will prepare an environmental impact statement on Snowbird Ski and Summer Resort's proposed master development plan.

DATES: Comments concerning the scope of the analysis should be received in writing by June 16, 1997.

ADDRESSES: Send written comments to Michael Sieg, District Ranger, 6944 South 3000 East, Salt Lake City, Utah 84121.

FOR FURTHER INFORMATION CONTACT: Rob Cruz, District Environmental Coordinator, (801) 943–9483.

SUPPLEMENTARY INFORMATION: Snowbird Ski and Summer Resort, a ''Special Use Permit'' permittee is proposing to update its master plan. Much of the resort's permitted boundary lies on National Forest System Land. This proposal includes elements on both public and private lands. Public land elements include the following: upgrade the Big Emma NASTAR course; regrade and asphalt the Gad Valley parking lot; construct a new day lodge facility in the lower Gad Valley; upgrade the skier services facilities on Hidden Peak with a multi-use structure; add additional snowmaking capacity which would be completed in three phases and total approximately 110 acres; construct a new Gad III Chairlift; upgrade the Little Cloud Chairlift to a fixed-grip quad; implement a vegetation management plan; regrade portions of the following ski trails: Middle Bassackwards, Madam Annie, ski access to upper Big Emma, Upper Regulator intermediate route, Big Emma creek crossing, and Modify the Blackjack Road: construct the following summer trails: Extension to the barrier-free trail; trails that would augment existing trails on both sides of Hidden Peak; construct an access road to the top station of the Gad III lift; construct ski trails associated with the God III chairlift; improve skier access from Hidden Peak into Peruvian Gulch and Mineral Basin.

The following private land elements are also included in this proposal; construct a quad lift and fixed-grip double in Mineral Basin; develop, improve or maintain the following trails and roads: Chips Switchback; Lower Men's Downhill Chute; South Ridge widening; construct new ski trails in Mineral Basin; a snowcat route from the top of Little Cloud lift down into Mineral Basin; Mineral Basin access tunnel/road; alter a rock chute in Mineral Basin and install three avalauncher platforms in Mineral Basin. Associated with the Mineral Basin expansion, the special use permit would be expanded to include portions of the Uinta National Forest. A complete description of the proposal and its elements is available from the Salt Lake Ranger District.

In addition to obtaining a new Ski Area Term Special Use Permit from the Forest Service, Snowbird may also be required to obtain a Department of Army 404 permit from the Army Corps of Engineers and consult with the Environmental Protection Agency. They may also be required to obtain an amendment of water supply permit agreement from Salt Lake City Department of Public Utilities.

A scoping document will be sent to over 750 individuals, organizations and government agencies on May 16, 1997, explaining the decision to conduct an environmental impact statement, and soliciting comments. Comments received from scoping documents on Snowbird's Three and Five-year plans will be included in this analysis. Two public meetings will be held during the scoping period: June 2, 1997 at the Hampton Inn (10690 South, 160 West) in Sandy, Utah, and June 3, at the Lehi Public Library, 120 Center Street, Lehi, Utah. Both meetings will run from 7:00 p.m. to 9:00 p.m. Preliminary issues identified by the Forest Service interdisciplinary team include effects on visual quality, effects on wetland and riparian areas, effects on water quality and quantity, effects on vegetation diversity, effects on fish and wildlife, effects on traffic and parking in Little Cottonwood Canyon, recreational conflicts and effects on threatened, endangered and sensitive species. Two preliminary alternatives have been identified. The proposed action alternative would permit the aforementioned projects and require Snowbird to convert to a new Ski Area Term Special Use Permit. The No Action alternative would continue the use as currently permitted with no new facilities.

The public is invited to submit comments or suggestions to the address above. Comments received from individuals, groups and government agencies received from the September 1993 and May 1995 scoping documents will be incorporated into this analysis. The responsible officials are Bernie Weingardt and Peter Karp, Forest Supervisors. A draft EIS is anticipated to be filed in May 1998 and the final EIS filed in November 1998.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's

notice of availability appears in the **Federal Register.** It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statements or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft 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 reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 533 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel,* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure 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.

Dated: May 8, 1997.

Michael Sieg,

District Ranger.

[FR Doc. 97–12851 Filed 5–15–97; 8:45 am]

BILLING CODE 3410–11–M

ASSASSINATION RECORDS REVIEW BOARD

Formal Determinations, Releases, Assassination Records Designation, and Reconsideration

AGENCY: Assassination Records Review Board.

ACTION: Notice.

SUMMARY: The Assassination Records Review Board (Review Board) met in a closed meeting on April 23–24, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of its decisions on a document-by-document basis in the **Federal Register** within 14 days of the date of the decision.

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, General Counsel and Associate Director for Research and Analysis, Assassination Records Review Board, Second Floor, Washington, DC 20530, (202) 724–0088, fax (202) 724–0457.

SUPPLEMENTARY INFORMATION: This notice complies with the requirements of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107.9(c)(4)(A) (1992). On April 23–24, 1997, the Review Board made formal determinations on records it reviewed under the JFK Act. These determinations are listed below. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives.

Notice of Formal Determinations

For each document, the number of postponements sustained immediately follows the record identification number, followed, where appropriate, by the date the document is scheduled to be released or re-reviewed.

FBI Documents: Open in Full

124–10026–10296; 0; n/a
124–10027–10211; 0; n/a
124–10027–10463; 0; n/a
124–10031–10252; 0; n/a
124–10042–10192; 0; n/a
124–10048–10477; 0; n/a
124–10050–10356; 0; n/a
124–10050–10359; 0; n/a
124–10053–10356; 0; n/a
124–10058–10055; 0; n/a
124–10058–10057; 0; n/a
124–10058–10075; 0; n/a
124–10058–10082; 0; n/a
124–10058–10083; 0; n/a
124–10058–10088; 0; n/a
124–10073–10348; 0; n/a
124–10073–10351; 0; n/a
124–10159–10492; 0; n/a
124–10174–10222; 0; n/a
124–10236–10006; 0; n/a
124–10236–10008; 0; n/a
124–10237–10230; 0; n/a
124–10237–10377; 0; n/a
124–10241–10155; 0; n/a
124–10253–10070; 0; n/a
124–10256–10145; 0; n/a
124–10256–10147; 0; n/a
124–10167–1014; 0; n/a
124–10176–10325; 0; n/a
124–10241–10153; 0; n/a
124–10241–10157; 0; n/a
124–10253–10074; 0; n/a
124–10256–10162; 0; n/a
124–10261–10023; 0; n/a
124–10261–10152; 0; n/a
124–10264–10250; 0; n/a
124–10264–10342; 0; n/a
124–10264–10351; 0; n/a
124–10264–10358; 0; n/a
124–10264–10360; 0; n/a
124–10272–10396; 0; n/a
124–10272–10442; 0; n/a
124–10274–10332; 0; n/a

FBI Documents: Postponed in Part

124–10004–10025; 1; 10/2017
124–10023–10253; 1; 10/2017
124–10041–10418; 1; 04/2007
124–10053–10350; 2; 10/2017
124–10058–10053; 1; 04/2007
124–10060–10318; 5; 10/2017
124–10062–10355; 1; 10/2017
124–10073–10345; 1; 04/2007
124–10073–10426; 1; 10/2017
124–10073–10435; 2; 10/2017
124–10087–10021; 2; 10/2017
124–10114–10010; 8; 04/2007
124–10115–10027; 8; 04/2007
124–10115–10028; 8; 04/2007
124–10134–10075; 1; 10/2017
124–10135–10106; 2; 04/2007
124–10140–10092; 1; 10/2017
124–10140–10096; 2; 04/2007
124–10147–10108; 1; 10/2017
124–10152–10046; 1; 10/2017
124–10157–10423; 1; 10/2017
124–10166–10019; 1; 10/2017
124–10256–10132; 1; 04/2007
124–10004–10023; 1; 10/2017
124–10073–10424; 1; 10/2017
124–10160–10030; 2; 10/2017
124–10163–10134; 2; 10/2017
124–10172–10020; 6; 10/2017
124–10173–10484; 4; 04/2007
124–10173–10485; 7; 04/2007
124–10173–10489; 13; 04/2007
124–10173–10496; 5; 04/2007
124–10175–10039; 3; 10/2017
124–10176–10180; 1; 10/2017
124–10179–10129; 25; 04/2007
124–10179–10358; 2; 10/2017
124–10181–10353; 1; 04/2007
124–10184–10002; 10; 04/2007
124–10184–10015; 5; 04/2007
124–10184–10016; 6; 04/2007
124–10184–10019; 7; 04/2007
124–10184–10257; 19; 04/2007
124–10184–10300; 2; 04/2007
124–10184–10310; 1; 04/2007
124–10184–10311; 1; 04/2007
124–10187–10208; 1; 10/2017
124–10191–10096; 2; 04/2007
124–10191–10105; 1; 04/2007
124–10231–10064; 6; 10/2017
124–10247–10175; 1; 04/2007
124–10249–10325; 5; 04/2007
124–10264–10382; 1; 04/2007
124–10268–10388; 2; 04/2007
124–10269–10445; 3; 04/2007
124–10269–10469; 9; 04/2007
124–10274–10320; 6; 04/2007
124–10151–10233; 15; 10/2017
124–10179–10347; 15; 10/2017
124–10184–10059; 15; 10/2017
124–10185–10281; 15; 10/2017
124–10185–10283; 15; 10/2017
124–10192–10011; 15; 10/2017
124–10273–10385; 15; 10/2017
124–10276–10464; 15; 10/2017
124–90001–10002; 65; 10/2017
124–90001–10003; 10; 10/2017
124–90001–10004; 4; 10/2017
124–90001–10005; 14; 10/2017
124–90001–10010; 34; 10/2017
124–90001–10013; 4; 10/2017
124–90001–10014; 2; 10/2017
124–90001–10015; 7; 10/2017
124–90001–10016; 2; 10/2017

124–90001–10017; 4; 10/2017
124–90001–10022; 5; 10/2017
124–90001–10023; 6; 10/2017
124–90001–10026; 7; 10/2017
124–90001–10031; 1; 10/2017

CIA Documents: Postponed in Part

104–10069–10068; 2; 10/2017
104–10069–10077; 3; 10/2017
104–10069–10082; 1; 10/2017
104–10069–10086; 1; 10/2017
104–10069–10094; 3; 10/2017
104–10069–10100; 1; 10/2017
104–10069–10102; 1; 10/2017
104–10069–10103; 2; 10/2017
104–10069–10104; 1; 10/2017
104–10069–10112; 7; 10/2017
104–10069–10122; 4; 10/2017
104–10069–10194; 1; 10/2017
104–10069–10236; 4; 10/2017
104–10069–10237; 1; 10/2017
104–10069–10275; 3; 10/2017
104–10069–10281; 2; 10/2017
104–10069–10283; 3; 10/2017
104–10069–10285; 1; 10/2017
104–10069–10288; 3; 10/2017
104–10069–10299; 2; 10/2017
104–10069–10332; 6; 10/2017
104–10069–10334; 3; 10/2017
104–10069–10349; 11; 10/2017
104–10069–10374; 10; 10/2017
104–10069–10375; 10; 10/2017
104–10069–10376; 1; 10/2017
104–10069–10421; 1; 10/2017
104–10069–10432; 3; 10/2017
104–10070–10086; 3; 10/2017
104–10070–10089; 3; 10/2017
104–10070–10090; 2; 10/2017
104–10070–10091; 1; 10/2017
104–10070–10117; 6; 10/2017
104–10070–10118; 9; 10/2017
104–10070–10122; 2; 10/2017
104–10070–10147; 1; 10/2017
104–10070–10150; 10; 10/2017
104–10070–10172; 1; 10/2017
104–10071–10106; 2; 10/2017
104–10071–10108; 1; 10/2017
104–10071–10222; 5; 10/2017
104–10071–10229; 7; 10/2017
104–10071–10237; 5; 10/2017
104–10071–10238; 1; 10/2017
104–10071–10239; 3; 10/2017
104–10071–10243; 1; 10/2017
104–10071–10248; 4; 10/2017
104–10071–10254; 5; 10/2017
104–10071–10260; 4; 10/2017
104–10071–10269; 5; 10/2017
104–10071–10274; 3; 10/2017
104–10071–10279; 5; 10/2017
104–10071–10282; 5; 10/2017
104–10071–10294; 5; 10/2017
104–10071–10302; 4; 10/2017
104–10071–10315; 11; 10/2017
104–10071–10316; 5; 10/2017
104–10071–10318; 13; 10/2017
104–10071–10321; 5; 10/2017
104–10071–10323; 3; 10/2017
104–10071–10327; 5; 10/2017
104–10071–10330; 5; 10/2017
104–10071–10334; 4; 10/2017
104–10071–10336; 5; 10/2017
104–10071–10339; 6; 10/2017
104–10071–10343; 4; 10/2017
104–10071–10349; 6; 10/2017
104–10071–10357; 4; 10/2017
104–10071–10360; 1; 10/2017
104–10071–10363; 5; 10/2017
104–10071–10366; 11; 10/2017
104–10071–10368; 9; 10/2017
104–10071–10372; 5; 10/2017
104–10071–10375; 5; 10/2017
104–10071–10383; 4; 10/2017
104–10071–10388; 3; 10/2017
104–10071–10393; 2; 10/2017
104–10071–10402; 8; 10/2017
104–10071–10408; 1; 10/2017
104–10071–10412; 1; 10/2017
104–10071–10421; 2; 10/2017
104–10071–10432; 1; 10/2017
104–10071–10437; 1; 10/2017
104–10072–10000; 1; 10/2017
104–10072–10013; 4; 10/2017
104–10072–10016; 1; 10/2017
104–10072–10020; 2; 10/2017
104–10072–10021; 6; 10/2017
104–10072–10023; 1; 10/2017
104–10072–10032; 12; 10/2017
104–10072–10077; 1; 10/2017
104–10072–10080; 6; 10/2017
104–10072–10083; 2; 10/2017
104–10072–10088; 23; 10/2017
104–10072–10089; 5; 10/2017
104–10072–10094; 10; 10/2017
104–10072–10101; 8; 10/2017
104–10072–10107; 2; 10/2017
104–10072–10112; 1; 10/2017
104–10072–10114; 5; 10/2017
104–10072–10144; 1; 10/2017
104–10072–10186; 3; 10/2017
104–10072–10188; 9; 10/2017
104–10072–10212; 1; 10/2017
104–10072–10225; 19; 10/2017
104–10072–10226; 5; 10/2017
104–10072–10260; 1; 10/2017
104–10072–10262; 7; 10/2017
104–10072–10263; 1; 10/2017
104–10072–10264; 2; 10/2017
104–10072–10267; 1; 10/2017
104–10072–10272; 5; 10/2017
104–10072–10276; 1; 10/2017
104–10072–10288; 3; 10/2017
104–10072–10291; 19; 10/2017
104–10072–10311; 8; 10/2017
104–10073–10070; 5; 10/2017
104–10073–10072; 3; 10/2017

HSCA Documents: Postponed in Part

180–10142–10308; 8; 10/2017
180–10142–10310; 7; 10/2017
180–10142–10311; 6; 10/2017
180–10142–10312; 5; 10/2017
180–10142–10315; 2; 10/2017
180–10142–10316; 6; 10/2017
180–10142–10317; 1; 10/2017
180–10142–10318; 3; 10/2017
180–10142–10320; 1; 05/2001
180–10142–10373; 3; 10/2017
180–10142–10379; 8; 10/2017
180–10142–10385; 13; 10/2017
180–10142–10389; 1; 10/2017
180–10142–10390; 1; 10/2017
180–10142–10404; 3; 10/2017
180–10142–10406; 3; 10/2017
180–10142–10413; 16; 10/2017
180–10143–10109; 5; 10/2017
180–10143–10110; 1; 10/2017
180–10143–10111; 11; 10/2017
180–10143–10114; 5; 10/2017
180–10143–10116; 10; 05/2001
180–10143–10121; 2; 10/2017
180–10143–10131; 6; 10/2017
180–10143–10134; 38; 10/2017
180–10143–10145; 18; 10/2017
180–10143–10151; 3; 10/2017
180–10143–10163; 1; 10/2017
180–10143–10173; 2; 10/2017
180–10143–10194; 3; 10/2017
180–10143–10203; 2; 10/2017
180–10143–10204; 4; 10/2017
180–10143–10206; 1; 10/2017
180–10143–10211; 5; 05/2001
180–10143–10212; 4; 10/2017

INS Documents: Postponed in Part

136–10001–10356; 1; 10/2017

NSA Documents: Postponed in Part:

144–10001–10161; 1; 10/2017
144–10001–10186; 2; 10/2017
144–10001–10188; 6; 10/2017
144–10001–10213; 5; 10/2017
144–10001–10214; 4; 10/2017
144–10001–10215; 2; 10/2017
144–10001–10217; 5; 10/2017
144–10001–10218; 3; 10/2017
144–10001–10219; 2; 10/2017
144–10001–10227; 1; 10/2017
144–10001–10229; 3; 10/2017
144–10001–10230; 4; 10/2017
144–10001–10246; 1; 10/2017

Notice of Additional Releases

After consultation with appropriate Federal agencies, the Review Board announces that the following Central Intelligence Agency records are now being opened in full:

104–10001–10011; 104–10001–10020; 104–10001–10030; 104–10001–10060; 104–10001–10065; 104–10001–10068; 104–10001–10070; 104–10001–10138; 104–10001–10143; 104–10001–10156; 104–10001–10161; 104–10001–10161; 104–10001–10165; 104–10001–10176; 104–10002–10002; 104–10002–10003; 104–10002–10006; 104–10002–10011; 104–10002–10012; 104–10002–10013; 104–10002–10015; 104–10002–10020; 104–10002–10038; 104–10002–10041; 104–10002–10042; 104–10002–10057; 104–10002–10065; 104–10002–10091; 104–10002–10093; 104–10002–10099; 104–10002–10103; 104-10002–10111; 104–10002–10114; 104–10002–10120; 104–10002–10124; 104–10002–10126; 104–10002–10127; 104–10003-10003; 104–10003–10007; 104–10003–10010; 104–10003–10013; 104–10003–10018; 104–10003–10028; 104–10003–10033; 104–10003–10046; 104–10003–10048; 104–10003–10051; 104–10003–10052; 104–10003–10054; 104–10003–10061; 104–10003–10063; 104–10003–10065; 104–10003–10068; 104–10003–10080; 104–10003–10082; 104–10003–10084; 104–10003–10107; 104–10003–10133; 104–10003–10138; 104–10003–10141; 104–10003–10155; 104–10003–10184; 104–10003–10189; 104–10003–10190; 104–10003–10192; 104–10003–10205; 104–10003–10206; 104–10003–10208; 104–10003–10230; 104–10003–10233; 104–10013–10169

After consultation with appropriate Federal agencies, the Review Board announces that the following House Select Committee on Assassination records are now being opened in full:

180–10065–10381; 180–10068–10372; 180–10068–10373; 180–10071–10068; 180–

10072–10081; 180–10073–10070; 180–10073–10071; 180–10073–10138; 180–10074–10440; 180–10075–10136; 180–10075–10137; 180–10075–10355; 180–10076–10310; 180–10076–10403; 180–10076–10415; 180–10077–10063; 180–10078–10017; 180–10078–10409; 180–10080–10416; 180–10080–10417; 180–10083–10142; 180–10094–10182; 180–10094–10453; 180–10096–10038; 180–10097–10343; 180–10097–10344; 180–10101–10267; 180–10101–10291; 180–10102–10315; 180–10102–10492; 180–10104–10116; 180–10104–10219; 180–10104–10404; 180–10104–10405; 180–10104–10406; 180–10105–10075; 180–10105–10083; 180–10105–10207; 180–10105–10306; 180–10105–10329; 180–10106–10376; 180–10106–10384; 180–10108–10018; 180–10108–10081; 180–10108–10208; 180–10108–10232; 180–10110–10051; 180–10110–10052; 180–10110–10053; 180–10110–10055; 180–10110–10060; 180–10110–10084; 180–10110–10087; 180–10110–10088; 180–10110–10089; 180–10110–10090; 180–10110–10098; 180–10110–10107; 180–10110–10109; 180–10110–10111; 180–10110–10112; 180–10110–10114; 180–10110–10115; 180–10110–10116; 180–10110–10117; 180–10110–10119; 180–10110–10120; 180–10110–10126; 180–10110–10128; 180–10110–10148; 180–10110–10149; 180–10110–10151; 180–10110–10153; 180–10110–10154; 180–10110–10156; 180–10110–10161; 180–10110–10165; 180–10110–10184; 180–10110–10185; 180–10110–10186; 180–10110–10187; 180–10110–10188; 180–10110–10194; 180–10110–10201; 180–10110–10205; 180–10110–10212; 180–10110–10213; 180–10110–10218; 180–10110–10219; 180–10110–10234; 180–10112–10413; 180–10112–10427; 180–10114–10323; 180–10114–10329; 180–10116–10101; 180–10116–10102; 180–10116–10201; 180–10117–10138; 180–10117–10228; 180–10120–10311; 180–10120–10334; 180–10120–10356

After consultation with appropriate Federal agencies, the Review Board announces that the following Ford Library records are now being opened in full:

178–10002–10087; 178–10002–10157; 178–10002–10160; 178–10002–10161; 178–10002–10162; 178–10002–10163; 178–10002–10164; 178–10002–10165; 178–10002–10178; 178–10002–10184; 178–10002–10196; 178–10002–10246; 178–10002–10348; 178–10002–10361; 178–10003–10050; 178–10003–10321; 178–10004–10052; 178–10004–10128; 178–10004–10282

After consultation with appropriate Federal agencies, the Review Board announces that the following National Archives and Records Administration records are now being opened in full:

179–20001–10111, 179–20001–10148, 179–20001–10172, 179–20001–10223, 179–20001–10258, 179–20001–10264, 179–20001–10271, 179–20001–10325, 179–20002–10094, 179–20002–10204, 179–20002–10205, 179–20002–10220, 179–20002–10226, 179–20002–10287, 179–20002–10449, 179–20003–10085, 179–20003–10087, 179–20003–10132, 179–20003–10135, 179–20003–10149, 179–20003–10246, 179–20003–10262, 179–20003–10275, 179–20003–10298, 179–20003–10451, 179–20004–10231, 179–30001–10094, 179–30001–10154, 179–30001–10254, 179–30001–10376, 179–30001–10416, 179–30001–10420, 179–30002–10025

Notice of Assassination Records Designation

Designation: On April 23–24, 1997, the Review Board designated the following document an ''assassination record'': The film known as the out-of-camera original Zapruder Film currently housed at the National Archives and identified as 200 ZAP 1; ORSK (P) 8mm.

Designation: On April 23–24, 1997, the Review Board designated the following United States Secret Service records ''assassination records'': USSS–FBI Agreement (drafts dated 11–27–64 and 12–3–64), 16 pages; documents from the Raymond Broshears file (CO–2–42269), 32 pages; documents from the Abraham Bolden file (J–CO–1–9513), 1311 pages. The Review Board also confirmed that the Pedro Diaz Lanz file (CO–2–29146), 115 pages, is an ''assassination record.''

Notice of Corrections

On November 14, 1996, the Review Board made formal determinations that were published in the December 6, 1996 **Federal Register** (FR Doc. 96–31046, 61 FR 64662). For that notice, make the following corrections:

Original record number	Corrected record number	Document data
104–10066–10082	104–10066–10084	0; 2; 05/1997

On November 14, 1996, the Review Board made formal determinations that were published in the December 6, 1996 **Federal Register** (FR Doc. 96–31046, 61 FR 64662). For that notice, make the following corrections:

Original record number	Previously published	Corrected data
144–10001–10053	Released in Full	2; 1; 10/2017
144–10001–10057	Released in Full	2; 1; 10/2017
144–10001–10087	16; 6; 10/2017	15; 7; 10/2017
144–10001–10117	19; 9; 10/2017	18; 10; /2017
144–10001–10118	18; 10; 10/2017 ..	17; 11; 10/2017
144–10001–10141	Released in Full	2; 1; 10/2017
144–10001–10155	Released in Full	2; 1; 10/2017

On March 13–14, 1997 the Review Board made formal determinations that were published in the April 2, 1997 **Federal Register** (FR Doc. 97–8408, 62 FR 15650). For that notice, make the following corrections:

Original record number	Previously published	Corrected data
124–10172–10020	5; 5; 10/2017	5; 6; 10/2017

Notice of Reconsideration

At its March 13–14, 1997 meeting the Review Board voted on FBI documents 124-10062–10331 and 124–10120–10017, (reported at FR Doc. 97–8408, 62 FR 15650). The Review Board has voted to allow the FBI additional time to provide information to the Review Board with respect to these documents.

Dated: May 13, 1997.

David G. Marwell,

Executive Director.

[FR Doc. 97–12860 Filed 5–15–97; 8:45 am]

BILLING CODE 6118–01–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: June 16, 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 14, 28 and March 21, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 FR 6946, 9158 and 13591) 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:

Grounds Maintenance

Recreation Areas,
Hickam Air Force Base, Hawaii

Laundry Service

Cadet Linen Exchange Service,
U.S. Air Force Academy,
Colorado Springs, Colorado

Library Services

Minot Air Force Base, North Dakota

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. 97–12902 Filed 5–15–97; 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 proposal(s) to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 16, 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 services 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 services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and 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 commodities and services 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 services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Office and Miscellaneous Supplies
(Requirements for Fort Dix, New Jersey)
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina

Services

Laundry Service

Transient Personnel Unit, BEQ & BOQ, Fleet Anti-Submarine Warfare Center, San Diego, California
NPA: Job Options, Inc., San Diego, California

Linen Rental Service (Standard Grade Linen)

Fleet and Industrial Supply Center, Norfolk, Virginia
NPA: Louise W. Eggleston Center, Inc., Norfolk, Virginia

Linen Rental Service (Premium Grade Linen)
Fleet and Industrial Supply Center, Norfolk, Virginia
NPA: Louise W. Eggleston Center, Inc., Norfolk, Virginia
Colonial Workshop, Inc., Williamsburg, Virginia
Chesapeake Service Systems, Inc., Chesapeake, Virginia

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–12903 Filed 5–15–97; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Public Assistance Payments by County

ACTION: Proposed collection; comment requested.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 15, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW, Washington, DC 20230. Phone number: (202) 482–3272.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Robert L. Brown, Chief, Regional Economic Measurement Division, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9246; and fax: (202) 606-5322.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Economic Analysis prepares estimates of personal income for States and counties. To produce county estimates of State-administered public assistance payments, which are a part of personal income, it is necessary to request data directly from the responsible State agencies. The data, which are compiled by the States for their own administrative purposes, are only available from the State administering the program.

II. Method of Collection

Information is obtained from State agencies who voluntarily agree to provide data on programs they administer regarding public assistance payments by county. Submission of the data is requested in the form that is most expedient and convenient for the agencies.

III. Data

OMB Number: 0608–0037.

Form Number: NA.

Type of Review: Renewal—regular submission.

Affected Public: State government agencies.

Estimated Number of Respondents: 24.

Estimated Time Per Response: 6 hours per reporter.

Estimated Total Annual Burden Hours: 144 hours.

Estimated Total Annual Cost: The estimated total annual cost to the government is $2,200. The estimated annual cost to the public is $2,880 based on total number of hours estimated as the reporting burden and an estimated hourly cost of $20.

Respondent's Obligation: Voluntary.

Legal Authority: 15 U.S.C. 175 and 1516.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized an/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 12, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–12835 Filed 5–15–97; 8:45 am]

BILLING CODE 3510–EA–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

2000 Census Advisory Committee

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, as amended by Public Law 94–409, Public Law 96–523, and Public Law 97–375), we are giving notice of a meeting of the 2000 Census Advisory Committee. The meeting will convene on May 30, 1997 at the Inn and Conference Center, University of Maryland University College, University Boulevard and Adelphi Road, College Park, MD 20742. The agenda includes discussions on the Race and Ethnic Targeted Test Results and the decision-making process for OMB Directive Number 15.

The Advisory Committee is composed of a Chair, Vice-Chair, and up to 35 member organizations, all appointed by the Secretary of Commerce. The Advisory Committee will consider the goals of Census 2000 and user needs for information provided by that census and provide a perspective from the standpoint of the outside user community about how operational planning and implementation methods proposed for Census 2000 will realize those goals and satisfy those needs. The Advisory Committee shall consider all aspects of the conduct of the 2000 Census of Population and Housing and shall make recommendations for improving that census.

DATES: On Friday, May 30, 1997, the meeting will begin at 8:45 a.m. and adjourn for the day at 4:30 p.m.

ADDRESSES: The meeting will take place at the Inn and Conference Center, University of Maryland University College, University Boulevard and Adelphi Road, College Park, MD 20742.

FOR FURTHER INFORMATION CONTACT: Anyone wishing additional information about this meeting or who wishes to submit written statements or questions may contact Maxine Anderson-Brown, Committee Liaison Officer, Department of Commerce, Bureau of the Census, Room 3039, Federal Building 3, Washington, DC 20233, telephone: 301–457–2308, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: A brief period will be set aside for public comment and questions. However, individuals with extensive questions or statements for the record must submit

them in writing to the Commerce Department official named above at least three working days prior to the meeting.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Maney; her telephone number is 301–457–2308, TDD 301–457–2540.

Dated: May 9, 1997.

Everett M. Ehrlich,

Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 97–12920 Filed 5–15–97; 8:45 am]

BILLING CODE 3510–EA–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 16, 1997.

FOR FURTHER INFORMATION CONTACT: Gabriel Adler at (202) 482–1442 or Kris Campbell at (202) 482–3813, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Amended Final Results

On December 31, 1996, the Department of Commerce (the Department) published the final results of its administrative review of the antidumping duty order on certain welded carbon steel pipe and tube (pipe and tube) from Turkey, for the period of review (POR) May 1, 1994, through April 30, 1995 (61 FR 69067). On April 7, 1997, the Department published a notice of amended final results of administrative review, correcting several clerical errors in the calculation of the antidumping margin for the Borusan Group (Borusan) (62 FR 16547). On April 11, 1997, Borusan filed a timely allegation, pursuant to 19 CFR 353.28, that a ministerial error had been made in the calculation of the amended final results. Specifically, Borusan alleged that, in amending its final results to correct certain cost data, the Department failed to re-run the portion of the computer program that contained the cost test, and instead relied on a database of above-cost sales that did not incorporate the corrections to the cost data.

We have determined that the April 7, 1997, amended final results of review contain the ministerial error alleged by Borusan. Therefore, in accordance with section 751(h) of the Act and 19 CFR 353.28(c), we are further amending the final results of administrative review of steel pipe and tube from Turkey for the period May 1, 1994, through April 30, 1995, to correct this ministerial error.

Scope of the Review

Imports covered by this review are shipments of certain welded carbon steel pipe and tube products with an outside diameter of 0.375 inch or more but not over 16 inches, of any wall thickness. These products are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. These products, commonly referred to in the industry as standard pipe and tube, are produced to various American Society for Testing and Materials (ASTM) specifications, most notably A–120, A–53 or A–135.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Amended Final Results of Review

Upon correction of the above-cited ministerial error, we have determined that the following margins exist for the period indicated:

Manufacturer/ exporter	Time period	Margin percent
Borusan Group	5/1/94–4/30/95	2.57

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

We will direct the Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of the review (61 FR 69067) and as amended by this determination. The amended deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This notice reminds importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also reminds parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.28.

Dated: May 9, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–12793 Filed 5–15–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 16, 1997.

FOR FURTHER INFORMATION CONTACT: Brian Smith at (202) 482–1766 or Kris Campbell at (202) 482–3813, Office of

Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930 (the Act), as amended, are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Amended Final Results

On December 31, 1996, the Department of Commerce (the Department) published the final results of its administrative review of the antidumping duty order on certain welded carbon steel pipe and tube (pipe and tube) from Turkey (61 FR 69067). The period of review (POR) is May 1, 1994, through April 30, 1995.

On January 17, 1997, Erciyas Boru Sanayii ve Ticaret A.S. (Erbosan) filed a timely allegation, pursuant to 19 CFR 353.28, of a ministerial error with regard to the final results in the 1994–95 administrative review of the antidumping duty order on pipe and tube from Turkey. Erbosan alleged that the Department intended to index costs based on the month of shipment, but instead indexed based on the sale date.

We have determined, in accordance with section 751(h) of the Act, that a ministerial error was made in our margin calculation for Erbosan. For a detailed discussion and the Department's analysis, see Memorandum from Case Analysts to Richard W. Moreland, dated April 7, 1997. In accordance with 19 CFR 353.28(c), we are amending the final results of the administrative review of steel pipe and tube from Turkey to correct this ministerial error.

Scope of the Review

Imports covered by this review are shipments of certain welded carbon steel pipe and tube products with an outside diameter of 0.375 inch or more but not over 16 inches, of any wall thickness. These products are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. These products, commonly referred to in the industry as standard pipe and tube, are produced to various American Society for Testing and Materials (ASTM) specifications, most notably A–120, A–53 or A–135.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Amended Final Results of Review

Upon correction of the ministerial errors, we have determined that the following margins exist for the period indicated:

Manufacturer/ exporter	Time period	Margin percent
Erbosan	5/1/94–4/30/95	7.54

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

We will direct the Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of the review (61 FR 69067) and as amended by this determination. The amended deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.28.

Dated: May 9, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–12794 Filed 5–15–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Bluefin Tuna Statistical Documents

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 15, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to: Mark Murray-Brown, National Marine Fisheries Service, Highly Migratory Species Division, One Blackburn Dr., Gloucester, MA 01930–2298, (508) 281–9208.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of the collection of information is to comply with the United States' obligations under the Atlantic Tunas Convention Act. The Act requires the Secretary of Commerce to promulgate regulations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). As a member of ICCAT, the United States is required to take part in the collection of biological statistics for research purposes. These actions include a requirement for a completed, approved statistical document as a condition for lawful import, export, or re-export of Pacific or Atlantic bluefin

tuna. The collection serves three purposes of ICCAT: (1) Provides stock assessment and research information, (2) verifies catch monitoring programs so as not to exceed the country quota, and (3) augments NMFS's ability to better quantify all bluefin tuna that enter into commerce of the United States.

II. Method of Collection

A Bluefin Tuna Statistical Document must accompany all imports or exports of bluefin tuna. Copies must be retained for 2 years. In certain cases NOAA authorization can be obtained by firms to validate the Document in place of a government official.

III. Data

OMB Number: 0648–0040.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: Importers and exporters.

Estimated Number of Respondents: 60.

Estimated Time Per Response: 20 minutes.

Estimated Total Annual Burden Hours: 311.

Estimated Total Annual Cost to Public: $300.00.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 12, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–12945 Filed 5–16–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Information Needed for Wreckfish Share Transfer

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 15, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Edward E. Burgess, Southeast Regional Office, 9721 Executive Center Drive North, St. Petersburg, Florida 33702, (813) 570-5326.

SUPPLEMENTARY INFORMATION:

I. Abstract

The wreckfish fishery for the South Atlantic is managed under an Individual Transferable Quota System. Under this system fishermen are issued a share of the fishery and an individual annual quota. Shares are issued by certificate and may be bought and sold. Buying and selling of shares are not completed until the transfer is recorded by the National Marine Fisheries Service. The information in this collection is necessary so the National Marine Fisheries Service can record the sale.

II. Method of Collection

When shares in the wreckfish fishery are sold, information concerning the sale is recorded on the back of the share certificate and sent to the National Marine Fisheries Service. The transfer of ownership is recorded and new share certificates issued.

III. Data

OMB Number: 0648–0262.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: Businesses (commercial fishermen).

Estimated Number of Respondents: 4.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 1 hour.

Estimated Total Annual Cost to Public: Shareholders are charged for the administrative cost of the share transfer. This annual cost is expected to be $160.00.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 12, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–12946 Filed 5–15–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Economic Data for the Bering Sea/ Aleutian Islands and Gulf of Alaska Groundfish Fisheries and Alaska Halibut Fisheries

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 15, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dave Colpo, Alaska Fisheries Science Center, 7600 Sand Point Way N.E., Seattle, WA 98115, (206) 526–4251.

SUPPLEMENTARY INFORMATION:

I. Abstract

Data on cost, earnings and employment in Bering Sea/Aleutian Islands (BSAI) and Gulf of Alaska (GOA) groundfish fisheries and the Alaska halibut fisheries will be collected from the following four groups: (1) On-shore processors; (2) motherships; (3) catcher/processor vessels; and (4) catcher vessels. Companies associated with these groups will be surveyed for cost, earnings and employment data. In general, questions will be asked concerning ex-vessel and wholesale prices and revenue, variable and fixed costs, dependence on the fisheries, and fishery employment. During the first year of this data collection program, data will be collected for the BSAI pollock fishery. The BSAI pollock fishery data are expected to be used for the following three purposes: (1) To evaluate methods for collecting cost, earnings and employment data on an ongoing basis for the Alaska groundfish and halibut fisheries in order to better assess inter-annual changes in the economic performance of the fishery and the effects of alternative management measures; (2) to allow the North Pacific Fishery Management Council (Council) and the National Marine Fisheries Service (NMFS) to conduct such assessments for the BSAI pollock fishery; and (3) to prepare the Regulatory Impact Review (E.O. 12866) and Regulatory Flexibility Act Review of the BSAI pollock allocation alternatives that the Council and the Secretary of Commerce will consider before the current inshore, offshore and CDQ allocations expire at the end of 1998. As required by law, the confidentiality of the data will be protected.

The ex-vessel and product value of the BSAI pollock fishery in 1995 exceeded $250 million and $800 million, respectively. The large scale of many of the harvesting and processing operations and the concentration of ownership in this fishery mean that improved economic data for the management of this fishery is a high priority for the individuals who will provide data for each of the four groups. This is demonstrated by the fact that the associations representing the four groups support this data collection effort and have volunteered to assist in proving the data.

In each subsequent year, the data collection effort will focus on a different component of the groundfish and halibut fisheries and more limited data will be collected for the previously surveyed components of these fisheries. The latter would be done to update the models that will be used to track economic performance and to evaluate the economic effects of alternative management actions. This cycle of data collection will result in cost, earning and employment data being available and updated for all the components of the groundfish and halibut fisheries.

II. Method of Collection

During the first year, data will be collected from a sample of the owners and operators of catcher vessels and factory trawlers that participate in the BSAI pollock fishery and from the owners of each of the principal on-shore processing plants and motherships that participate in the BSAI pollock fishery. The data are expected to be collected principally by NMFS economists unless funding becomes available to collect some of the data under contract. Questionnaires will be mailed to the selected members of each of the four survey groups and in many cases those individuals will be interviewed to ensure the clarity of their responses. To the extent practicable, the data collected will consist of data that the respondents maintain for their own business purposes. Therefore, the collection burden will consist principally of transcribing data from their internal records to the survey instrument and participating in personal interviews.

In subsequent years, a similar method will be used to collect the same types of information from comparable groups for other components of the groundfish and halibut fisheries and brief questionnaires will be sent to a sample of previous respondents to update that data. Current data reporting requirements will be evaluated to determine if they can be modified to provide improved economic data at a lower cost to respondents and the Agency.

III. Data

OMB Number: None.

Form Number: N/A.

Type of Review: Regular Submission.

Affected Public: Selected harvesters and processors in the Alaska groundfish and halibut fisheries.

Estimated Number of Respondents First Year: 45 in total consisting of 20 catcher vessel owners, 15 factory trawler owners, 5 mothership owners, and 5 on-shore processing plant owners.

Estimated Time Per Response First Year: 2 hours per catcher vessel and on average 2 catcher vessels per respondent; 5 hours per factory trawler and on average 2 vessels per respondent; and 5 hours per mothership and on-shore processor.

Estimated Total Annual Burden Hours First Year: 255 hours.

Estimated Number of Respondents in Subsequent Years: 60–200.

Estimated Time Per Response in Subsequent Years for New Respondents: 2 hours per catcher vessel per respondent; 5 hours per processing vessel or plant per respondent.

Estimated Time Per Response in Subsequent Years for Previous Respondents: 1 hour per catcher vessel per respondent; 2 hours per processing vessel or plant per respondent.

Estimated Total Annual Burden Hours Subsequent Years: 400–600 hours.

Estimated Total Annual Cost to Public: $0. Respondents will not be required to purchase equipment or materials to respond to this survey.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 12, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

(FR Doc. 97–12947 Filed 5–15–97; 8:45 a.m.)

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Quota and Visa Requirements to Include a New Exempt Certification Arrangement for Chinese Floor Coverings Produced or Manufactured in the People's Republic of China

May 13, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending quota and visa requirements.

EFFECTIVE DATE: May 13, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding dated February 1, 1997, the Governments of the United States and the People's Republic of China agreed to a new exempt certification arrangement for Chinese floor coverings in HTS numbers 5701.10.1600, 5701.10.4000, 5701.10.9000, 5702.10.9010, 5702.51.2000, 5702.91.3000, 5703.10.0020, 5705.00.2005 (Category 465); 5703.20.1000, 5703.30.0020 (Category 665) and 5702.99.1010 (Category 369) which have been produced by hand knotting, hand weaving, hand tufting or hand needlepoint, and which contain a design produced through the use of yarns of different colors or through carving the face of the floor covering.

Chinese floor coverings in the aforementioned HTS numbers, produced or manufactured in China and exported on and after April 1, 1997 shall be exempt from levels of restraint, visa requirements and an ELVIS (Electronic Visa Information System) transmission. If the commodity is exported on and after April 1, 1997 without an exempt certificate, then a visa and ELVIS transmission are required prior to the release of any portion of the shipment by the U.S. Customs Service. If a visa and an ELVIS transmission are not submitted, then the goods will be denied entry.

A facsimile of the exempt certification stamp is on file at the U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, room 3100.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the existing quota and visa requirements for textile products, produced or manufactured in China and exported on and after April 1, 1997.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 62 59 FR 6950, published on February 14, 1997; and 62 FR 15465, published on April 1, 1997.

Interested persons are advised to take all necessary steps to ensure that textile products that are entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the exempt certification requirements set forth in the letter published below to the Commissioner of Customs.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 13, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 27, 1997, by the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry of certain silk apparel, cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China for which the Government of the People's Republic of China has not issued an appropriate export visa and ELVIS (Electronic Visa Information System) transmission.

Also, this directive amends, but does not cancel, the February 10, 1997 directive that concerns imports of certain silk apparel, cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997.

Effective on May 13, 1997, you are directed, pursuant to a Memorandum of Understanding dated February 1, 1997, between the Governments of the United States and the People's Republic of China, to establish a new exempt certification arrangement for Chinese floor coverings in 5701.10.1600, 5701.10.4000, 5701.10.9000, 5702.10.9010, 5702.51.2000, 5702.91.3000, 5703.10.0020, 5705.00.2005 (Category 465); 5703.20.1000 and 5703.30.0020 (Category 665) and 5702.99.1010 (Category 369) which have been produced by hand knotting, hand weaving, hand tufting or hand needlepoint, and which contain a design produced through the use of yarns of different colors or through carving the face of the floor covering.

Chinese floor coverings in the aforementioned HTS numbers in Categories 369, 465 and 665, produced or manufactured in China and exported on and after April 1, 1997 shall be exempt from quota and visa requirements and an ELVIS transmission for entry if properly certified by the Government of the People's Republic of China.

An exempt certification must accompany each commercial shipment for the aforementioned textile products. An original rectangular-stamped marking in blue ink must appear on the front of the original commercial invoice. The original copy of the invoice with the original exempt certification will be required to enter the shipment into the United States. Duplicate copies of the invoice and/or the exempt certification may not be used.

Each exempt certification stamp shall include the certificate number, exempt item in by the shipment, quantity, date of issuance, signature of the issuing official and name and code of the issuing authority.

An exempt certification should be issued prior to the exportation of the shipment. Should a shipment be accompanied by a certification that is incorrect (i.e., the date of issuance, signature or other information is missing, or illegible) then the correct exempt certificate is required prior to the release of the goods.

If the product does not meet the conditions described above (e.g., the product is misdescribed or misclassified), the exempt certification is unacceptable (i.e., the signature is crossed out or altered in any way or other information is altered), or the commodity is exported without an exempt certificate, then a visa and an ELVIS transmission should be submitted prior to the release of any portion of the shipment by the U.S. Customs Service and the merchandise shall be subject to existing quota requirements. If a visa and ELVIS transmission are not submitted, then the goods will be denied entry.

An invoice may cover visaed merchandise or exempt certified merchandise, but not both.

A facsimile of the exempt certification stamp is enclosed.

The actions taken concerning the Government of the People's Republic of China with respect to imports of textiles and textile products in the foregoing categories have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the **Federal Register**.

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–12927 Filed 5–16–97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday and Thursday, May 28–29, 1997.

ADDRESSES: The meeting will be held at Naval Command, Control and Ocean Surveillance Center (NCCOSC), RDT&E Division/NRaD topside, Building A–33, Cloud Room, 53560 Silvergate Avenue, San Diego, CA 95152.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. Section 10(d)(1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1994), and that accordingly, this meting will be closed to the public.

Dated: May 13, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–12865 Filed 5–15–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, June 3, 1997.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Eric Carr, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. section 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated May 13, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–12866 Filed 5–15–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Friday, June 6, 1997.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Eliot Cohen, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. section 10(d)(1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1994), and that accordingly, this meeting will be closed to the public.

Dated: May 13, 1997.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–12870 Filed 5–15–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, June 5, 1997.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Timothy Doyle, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in field of electron devices.

The Working Group B meeting will be limited to view of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. section 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: May 13, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–12872 Filed 5–15–97; 8:45 am]

BILLING CODE 5000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–197–002]

Chandeleur Pipe Line Company; Notice of Compliance Filing

May 12, 1997.

Take notice that on May 5, 1997, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Pro Forma Second Revised Volume No. 1, the revised tariff sheets set forth in Appendix A to the filing, in compliance with the Commission's Order No. 587–C and the Commission's March 4, 1997 Order in this docket, to become effective November 1, 1997.

Chandeleur states that it is also filing Tariff Sheet Nos. 44, 47 and 52 to correct grammatical errors, to become effective June 1, 1997.

Chandeleur states that it is serving copies of the filing to its customers, State Commissions, and interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12833 Filed 5–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–61–005]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 12, 1997.

Take notice that on May 7, 1997, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective May 1, 1997.

NGT states that the purpose of this filing is to comply with the Order on Rehearing and on Second Compliance Filing issued by the Commission on April 22, 1997. Such Order required NGT to file revised tariff sheets implementing the provisions thereof no later than fifteen (15) days after the issuance of the Order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12830 Filed 5–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR97–4–000]

Pontchartrain Natural Gas System; Notice of Petition for Rate Approval

May 12, 1997.

Take notice that on February 7, 1997, Pontchartrain Natural Gas System (Pontchartrain) filed pursuant to Section 284.123(b)(2) of the Commission's Regulations, a petition for rate approval requesting that the Commission approve as fair and equitable, market-based rates for storage services performed under

section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Pontchartrain states that it is a Hinshaw Pipeline that operates wholly within the State of Louisiana and that it was issued a blanket certificate under section 284.224 on August 13, 1985. Pontchartrain provides storage service from a salt dome storage cavern it operates near Napoleonville, Assumption Parish, Louisiana. Pontchartrain states that the cavern is being leased from Shell Oil Company under a long term lease. Pontchartrain states that it currently provides Section 311 storage service to Shell Gas Services Company (Shell) under a contract that became effective November 9, 1992 and will terminate in 2012. Pontchartrain states that Shell is its only Section 311 storage customer and no other capacity is available for Section 311 service as all remaining capacity is used to serve intrastate customers.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the market-based negotiated rates for storage services will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before May 27, 1997. The petition for rate approval in on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12829 Filed 5–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–68–004]

Stingray Pipeline Company; Notice of Compliance Filing

May 12, 1997.

Take notice that on May 5, 1997, Stingray Pipeline Company (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective May 1, 1997.

Stingray states that the purpose of the filing is to comply with the Federal Energy Regulatory Commission's order issued on April 18, 1997 in Docket Nos. RP97–68–001, et al.

Stingray states that copies of the filing have been served on its jurisdictional customers, interested state commissions, and all parties set out on the official services list at Docket No. RP97–68.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12831 Filed 5–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–487–000]

Western Resources, Inc.; ONEOK, Inc., and WAI, Inc.; Notice of Application to Abandon Transportation and Exchange Services and Application for Certificate Transferring Certificates, Services, and Authorizations

May 12, 1997.

Take notice that on May 1, 1997, Western Resources, Inc. (Western), 818 Kansas Avenue, Topeka, Kansas 66612, ONEOK, Inc. (ONEOK), 100 West 5th Street, P.O. Box 871, Tulsa, Oklahoma 74103, and WAI, Inc. (WAI) jointly filed an application in Docket No. CP97–487–000. In the application, Western requests permission and approval, pursuant to section 7(b) of the Natural Gas Act, to abandon/transfer: (1) Its limited jurisdiction certificate, issued in Docket No. CP93–750–000, which authorized the transportation of gas on a no-fee exchange basis between Western and Southern Union Company, d/b/a Missouri Gas Energy; (2) its blanket certificate authorization, issued in Docket No. CP82–268–000; and (3) its section 7(f) service determination, issued to Western's predecessor—Kansas Power and Light Company in Docket No. CP89–485. ONEOK and WAI request a certificate authorizing ONEOK/WAI to: (1) Acquire Western's limited jurisdiction certificate; (2) acquire Western's blanket certificate authorization; (3) acquire Western's certificate authorizing its service area designation, i.e., Western's section 7(f) service determination; and (4) perform the transportation, exchange, and other services previously performed by Western, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

According to the Applicants, Western is a local distribution company that currently provides natural gas service to customers in Cherokee County, Kansas and Ottawa County, Oklahoma, ONEOK operates principally as a natural gas utility through its Oklahoma Natural Gas Company division, which serves customers in Oklahoma, and WAI will be formed prior to the proposed transfer transaction, as a corporation and wholly-owned subsidiary of Western, qualified to do business in Kansas.

The Applicants state that after the transfer transaction, ONEOK/WAI will be comprised of Western's existing gas operations in Cherokee County, Kansas and Ottawa County, Oklahoma and all of ONEOK's operations. The Applicants further assert that no change in gas business operations will occur at this time.

The Transfer Transaction

Western and ONEOK have entered into an agreement, dated December 12, 1996, under which Western will contribute its regulated gas businesses in Kansas and Oklahoma to WAI, including Western's stock in Westar Gas Marketing, Inc. (Western's marketing subsidiary), and Western's stock in Mid Continent Market Center, Inc. (MCMC),[1] in exchange for WAI common and preferred stock, and the assumption (by WAI) of certain of Western's unsecured debts. ONEOK will then merge into WAI, which (according to the Applicants) will result in the one-for-one conversion of all of the outstanding ONEOK common shares of stock into

[1] According to the Applicants, MCMC is a regulated, wholly-owned subsidiary of Western that the Commission recognized as a Hinshaw pipeline in Docket No. CP95–684–000. The Applicants add that MCMC operates in Kansas, providing interstate service under a blanket certificate issued in Docket No. CP95–684–000, under which MCMC is allowed to conduct transaction under Part 284 of the Commission's regulations.

WAI common shares, such that the ONEOK shareholders will own not less than 55 percent (55%) of the WAI outstanding equity. The Applicants state that, immediately following the transfer transaction, Western will own up to 9.9 percent (9.9%) of the outstanding WAI common stock and, together with the WAI preferred stock, up to 45 percent of the WAI outstanding equity. The applicants add that WAI will assume all of the debts of ONEOK as part of the transfer transaction, and that WAI will change its name to ONEOK, Inc. after the transfer transaction closes. Accordingly, the Applicants request that the Commission issue the certificate to WAI in the name of ONEOK, Inc.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 2, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application, if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment and a grant of the requested certificate are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12828 Filed 5–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–136–007

Williams Natural Gas Company; Notice of Report of Refunds

May 12, 1997.

Take notice that on April 15, 1997, Williams Natural Gas Company (WNG) tendered for filing a refund report pursuant to the November 27, 1997, Stipulation and Agreement in Docket No. RP95–136.

WGN states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above and on all of WNG's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests should be filed on or before May 19, 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12832 Filed 5–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–215–002]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

May 12, 1997.

Take notice that on May 7, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 the revised tariff sheets to the filing, to become effective February 1, 1997.

Williston Basin states that the revised tariff sheets reflect a revision to its current electric fuel reimbursement provision outlined in Section 38 of its FERC Gas Tariff, Second Revised Volume No. 1. In implementing its newly approved provision, Williston Basin discovered that the conversion factor proposed to be utilized to determine the level of dekatherm quantities of electric power purchased is flawed and consequently will not keep the Company and its shippers whole for the recovery of electric compressor fuel costs. Williston Basin is now proposing to simply utilize the cost of electric power purchased for use in the operation of its compressors as the basis for developing the appropriate reimbursement rates.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12834 Filed 5–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Cases Filed During the Week of April 7 Through April 11, 1997

During the Week of April 7 through April 11, 1997, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and

Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: May 7, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 7 Through April 11, 1997]

Date	Name and location of applicant	Case no.	Type of submission
4/7/97	Alfred G. Bell, Oak Ridge, Tennessee	VFA–0286	Appeal of an Information Request Denial. If Granted: The March 24, 1997 Freedom of Information Request Denial issued by Oak Ridge Operations Office would be rescinded, and Alfred G. Bell would receive access to certain DOE information.

[FR Doc. 97–12867 Filed 5–15–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Cases Filed During the Week of March 31 Through April 4, 1997

During the Week of March 31 through April 4, 1997, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: May 7, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of March 31 through April 4, 1997]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 2, 1996	Florence County Cooperative, Stephenson, Michigan.	RR272–290	Request for modification/rescission in the Crude Oil Refund Proceeding. If granted: The November 20, 1996 Dismissal Case No. RG272–730 issued to Florence County Cooperative would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
March 31, 1997	National Steel Corp., Pittsburgh, Pennsylvania.	VEG–0003	Petition for special redress. If granted: The Office of Hearings and Appeals would review the National Steel Corp. request for a Crude Oil refund.
.....	Personnel Security Hearing	VSO–0150	Request for hearing under 10 CFR part 710. If granted: An individual employed by the Department of Energy would receive a hearing under 10 CFR Part 710.
.....	Personnel Security Hearing	VSO–0151	Request for hearing under 10 CFR part 710. If granted: An individual employed by the Department of Energy would receive a hearing under 10 CFR Part 710.
Apr. 1, 1997	Personnel Security Review	VSA–0114	Request for review of opinion under 10 CFR part 710. If granted: The March 5, 1997 Opinion of the Office of Hearings and Appeals in Case No. VSO–0114 would be reviewed at the request of an individual employed by the Department of Energy.
Apr. 2, 1997	Personnel Security Hearing	VSO–0152	Request for hearing under 10 CFR part 710. If granted: An individual employed by the Department of Energy would receive a hearing under 10 CFR Part 710.
Apr. 3, 1997	Burns Concrete, Inc., Idaho Falls, Idaho	VFA–0284	Appeal of an information request denial. If granted: The January 30, 1997 Freedom of Information Request Denial issued by the Pittsburgh Naval Reactors Office would be rescinded, and Burns Concrete, Inc. would receive access to certain Doe information.
Apr. 4, 1997	Natural Resources Defense Council, Washington, D.C..	VFA–0285	Appeal of an information request denial. If granted: The March 19, 1997 Freedom of Information Request Denial issued by the Office of the Executive Secretariat would be rescinded, and Natural Resources Defense Council would receive access to certain DOE information.

[FR Doc. 97–12869 Filed 5–15–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of April 7 Through April 11, 1997

During the week of April 7 through April 11, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: May 7, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 28

Week of April 7 Through April 11, 1997

Appeals

Request for Exception

Edris Oil Service, Inc., 4/9/97, VEE–0042

Edris Oil Service, Inc. filed an Application for Exception from the Energy Information Administration requirement that it file form EIA–782B, the ''Resellers'/Retailers'' Monthly Petroleum Product Sales Report.'' In considering Edris's request, the DOE found that the firm was not experiencing a serious hardship or gross inequity. Accordingly, exception relief was denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Catalano Bros., Inc. et al	RF272–98700	4/10/97
Crude Oil Suppple Ref Dist	RB272–00106	4/9/97
James Freddie Grahlerr et al	RK272–02010	4/9/97
Metropolitan Petroleum Co./JM Pontiac	RF349–22	4/9/97
State of North Carolina	RK272–04041	4/9/97
Sunnyvale Elementary et al	RF272–80624	4/10/97
Wilson Johncox et al	RK272–4143	4/9/97

Dismissals

The following submissions were dismissed.

Name	Case No.
C.H. Leavins Gulf Service	RF272–84021
JM Family Enterprises, Inc	RF349–23
Manor Towers Owners Corp	RK272–3968
Natural Resources Def. Council	VFA–0285
Personnel Security Hearing	VSO–0131

[FR Doc. 97–12868 Filed 5–15–97; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5826–7]

Proposed Settlement Agreement; Ozone Nonattainment Areas; 15% VOC FIP for Phoenix, AZ

AGENCY: Enviromental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement.

SUMMARY: In accordance with Section 113(g) of the Clean Air Act (''Act''), as amended, 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement concerning litigation instituted against the Environmental Protection Agency (''EPA'') by the Arizona Center for Law in the Public Interest. The lawsuit concerns EPA's alleged failure to perform a nondiscretionary duty with respect to promulgating a federal implementation plan (''FIP'') to reduce volatile organic compound (''VOC'') emissions by fifteen percent [15%] from 1990 levels, under Act section 182(b)(1), in the Phoenix, AZ ozone nonattainment area.

For a period of thirty [30] days following the date of publication of this notice, the Agency will receive written comments relating to the settlement agreement. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement agreement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Copies of the settlement agreement are available from Phyllis Cochran, Air and Radiation Division (2344), Office of General counsel, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, (202) 260–7606. Written comments should be sent to Howard J. Hoffman at the above address and must be submitted on or before June 16, 1997.

Dated: May 12, 1997.

Scott C. Fulton,

Acting General Counsel.

[FR Doc. 97–12916 Filed 5–15–97; 8:45 am]
BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5480–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 28, 1997 Through May 02, 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 04, 1997 (62 FR 16154).

Draft EISs

ERP No. D–AFS–E61037–TN Rating EC1, Upper Ocoee River Corridor Land and Water-Based Recreational Development, Implementation, Cherokee National Forest, Ocoee Ranger District, Polk County, TN.

Summary: EPA expressed environmental concerns and suggests the final EIS contain specific mitigation measures for proposed road modifications.

ERP No. D–AFS–J65257–UT Rating LO, High Uintas Wilderness Forest Plan Amendment, Implementation, Ashley and Wasatch-Cache National Forests, Duchesne and Summit Counties, UT.

Summary: EPA expressed lack of objections.

ERP No. D–DOE–G06004–TX Rating EC2, Pantex Plant Continued Operation and Associated Storage of Nuclear Weapon Components, Implementation, Approvals and Permits Issuance, Carson County, TX.

Summary: EPA expressed environmental concerns regarding surface and groundwater impacts. EPA requested that these issues be clarified in the final EIS.

ERP No. D–FRC–L05053–WA Rating EO2, Condit Hydroelectric Project (FERC No. 2342–005), Relicensing, White Salmon River, Klickitat and Skamania Counties, WA.

Summary: EPA expressed environmental objections over the continued impacts on fish and other aquatic life in the McKenzie River due to project operation. EPA requested additional information to provide a comprehensive analysis of cumulative impacts and appropriately characterize the no-action alternative.

ERP No. D–NOA–A91063–00 Rating LO, Monfish Fishery Regulations Northeast Multispecies Fishery (FMP), Fishery Management Plan, Amendment 9, Implementation, Exclusive Economic Zone, off the New England and Mid-Atlantic Coast.

Summary: EPA had no objections to the proposal.

ERP No. DS–AFS–L65260–WA Rating EO2, Taneum/Peaches Road Access Project, New Information, Construction of I–90 South Access Projects, Plum Creek, North and South Fork Taneum, Cle Elum Ranger District, Kittitas County, WA.

Summary: EPA expressed environmental objections concerning the alternatives analysis project effects on Late-Successional Reserve and aquatic habitat, impacts to water quality and compliance with the Clean Water Act and Northwest Forest Plan.

Final EISs

ERP No. F–AFS–K65192–CA Jaybird Multi-Resource Project, Implementation, Downieville Ranger District, Yuba County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–K65161–CA Caliente Land and Resource Management Plan, Implementation, Kern, Tulare, King, San Luis, Obispo, Santa Barbara and Ventura Counties, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–COE–K35035–CA San Gabriel Canyon Sediment Management Plan, Dredging and Disposal of Sediments, COE Section 404 Permit, Special Use Permit and Right-of-Entry Issuance, Angeles National Forest, San Gabriel River, Los Angeles, CA.

Summary: ERP No. F–FRC–L05215–OR Leaburg-Walterville Hydroelectric (FERC. No. 2496) Project, Issuance of New License (Relicense), Funding and Land Trust Acquisition, McKenzie River, Lane County, OR.

Summary: EPA expressed environmental objection to the proposed action based on potential adverse impacts to fish and other aquatic life in the McKenzie River. EPA also expressed concerns over FERC's method of assessing impacts of the proposed alternative.

ERP No. F–GSA–E81037–FL 9300–9499 NW 41st Street Immigration and Naturalization Service Facility Consolidation, Development, Construction and Operation, Leasing, Dade County, FL.

Summary: EPA's previous issues have been resolved, therefore EPA had no objection to the action as proposed.

ERP No. F–GSA–K80038–CA New San Francisco Federal Building Office Building Construction, Implementation, City and County of San Francisco, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Regulations

ERP No. R–DOE–A05465–00 18 CFR Parts 4 and 375—Regulations for the Relicensing of Hydroelectric Projects; Notice of Proposed Rulemaking.

Summary: EPA supported the concept of early integration of the environmental analyses required under the National Environmental Policy Act with the pre-filing work currently conducted pursuant to Federal Power Act requirements for the licensing of hydroelectric projects.

Dated: May 13, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–12936 Filed 5–15–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5480–4]

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 May 05, 1997 Through May 09, 1997 Pursuant to 40 CFR 1506.9.

EIS No. 970169, FINAL EIS, AFS, WY, ID, Targhee National Forest Plan Oil and Gas Leasing Analysis, Implementation, Bonneville, Butte, Clark, Fremont and Madison Counties, ID and Teton County, WY, Due: June 16, 1997, Contact: Jerry Reese (208) 624–3151.

EIS No. 970170, DRAFT SUPPLEMENT, FHW, CT, I–95 at New Haven Harbor Crossing (Quinnipac River Bridge) Updated Information for Seven Alternatives on (Q-Bridge) Study, Funding, COE Section 404 Permit, U.S. Coast Guard Bridge Permit, New Haven, East Haven, Branford, Madison and Clinton, CT, Due: August 01, 1997, Contact: Donald West (860) 659–6703.

EIS No. 970171, DRAFT EIS, AFS, OR, Kalmiopsis Wilderness, Approval for

Motorized Vehicular Access to the Private Property within the Chetco River, Illinois Valley Ranger District, Siskiyou National Forest, Curry County, OR, Due: July 07, 1997, Contact: Don McLennan (541) 592–2166.

EIS No. 970172, FINAL EIS, FHW, WA, North Spokane Freeway Project, Improvements Transportation through the City of Spokane and Spokane County between I–90, Spokane County, WA, Due: June 16, 1997, Contact: Gene Fong (360) 753–9480.

EIS No. 970173, DRAFT EIS, COE, WI, Fox River Project, Navigation System, Operation and Maintenance, from De Pere to Menasha; Four Harbors on Lake Winnebago; Channels on the Upper Fox River from Lake Winnebago, WI, Due: June 30, 1997, Contact: Bob King (313) 226–6766.

EIS No. 970174, DRAFT EIS, FTA, CA, Mission Valley East Corridor Transit Improvement Project, between I–15 in Mission Valley and the East County community of La Mesa, Funding, COE Section 404 Permit, Metropolitan Transit Development Board (MTDB) and Light Rail Transit (LRT), San Diego County, CA, Due: July 01, 1997, Contact: Hymie Luden (415) 744–3115.

EIS No. 970175, FINAL EIS, DOE, SC, Savannah River Site, Shutdown of the River Water System (DOE/EIS–0268D), Implementation, Aiken, SC, Due: June 16, 1997, Contact: Andrew R. Grainger (800) 242–8269.

EIS No. 970176, FINAL SUPPLEMENT, EPA, NY, New York Dredged Material Disposal Site Designation for the Designation of the Historic Area Remediation Site (HARS) in the New York Bight Apex, (a.k.a. the Mud Dump Site (MDS), NY, Due: June 30, 1997, Contact: Robert W. Hargrove (212) 637–3890.

Amended Notices

EIS No. 970015, FINAL EIS, COE, VA, Lower Virginia Peninsula Regional Raw Water Supply Plan, Permit Approval, Cohoke Mill Creek, King William County, VA , Due: July 25, 1997, Contact: Pamela K. Painter (757) 441–7654. Published FR—01–24–97—Review Period Extended.

EIS No. 970152, DRAFT EIS, AFS, CA, Canyons Project, Implementation, Truckee Ranger District, Tahoe National Forest, Sierra and Nevada Counties, CA, Due: June 16, 1997, Contact: Caryn Hunter (916) 587–3558. Published FR—05–02–97—This EIS was inadvertently published in the 05–02–97 FR. The correct Notice of Availability was published in the 04–18–97 FR with the EIS No. 970137. The correct date comments are due back to the preparing agency is JUNE 2, 1997.

Dated: May 13, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–12937 Filed 5–15–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5826–6]

National Drinking Water Advisory Council Operator Certification Working Group; Notice of Open Meeting

Under Section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given that a meeting of the Operator Certification Working Group of the National Drinking Water Advisory Council (NDWAC) established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on June 5 and 6, 1997, from 9:00 a.m. to 5:00 p.m. at the Holiday Inn Central, 1501 Rhode Island Avenue, N.W., Washington, D.C. The meeting is open to the public to observe but due to past experience, seating will be limited and will be available on a first come, first served basis.

The purpose of this meeting is to discuss options to be forwarded to NDWAC on implementation of the Operator Certification provisions of the Safe Drinking Water Act Amendments of 1996. The working group members are meeting to gather information and analyze relevant issues and facts. Statements will be taken from the public at this meeting as time allows.

For more information, please contact Kenneth M. Hay, Designated Federal Officer, Operator Certification Working Group, U.S. EPA, Office of Ground Water and Drinking Water (MC: 4606), 401 M Street S.W., Washington, D.C. 20460. The telephone number is (202) 260–5552 and the e-mail address is hay.ken @ epamail.epa.gpv.

Dated: May 8, 1997.

Charlene Shaw,

Designated Federal Officer; National Drinking Water Advisory Council.

[FR Doc. 97–12917 Filed 5–15–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–735; FRL–5717–8]

American Cyanamid Company; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by the docket control number PF–735, must be received on or before June 16, 1997.

ADDRESSES: By mail submit written comments to: Public Response and Program Resources Branch, Field Operations Divison (7505C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Amelia M. Acierto, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 4-W60, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8375; e-mail: acierto.amelia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition as follows

proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–735] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number PF-735 and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 7, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

American Cyanamid Company

PP 3E4216

EPA has received a pesticide petition (PP) PP 3E4216 from American Cyanamid Company, Agricultural Research Division, P.O. Box 400, Princeton, NJ, 08543–0400. The petition proposes, pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, to amend 40 CFR part 180 to exempt the residues of 2,2′-(1,2-ethenediyl)bis[5-[[4-[bis(2-hydroxyethyl)amino]-6-phenylamino]-1,3,5-triazin-2-yl]amino]-benzenesulfonate from the requirement of a tolerance when used as inert ingredient (adjuvant and UV absorber/protectant) in pesticide formulations applied to 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 determined whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The petitioner is proposing the exemption from the requirement of a tolerance for 2,2′-(1,2-ethenediyl)bis[5-[[4-[bis(2-hydroxyethyl)amino]-6-phenylamino]-1,3,5-triazin-2-yl]amino]-benzenesulfonate (CAS Reg. No. 4404–43–7), a stilbene fluorescent whitening agent (FWA), to be used as an inert ingredient in biopesticide formulations intended for use on food and/or feed crops. USDA has patented the use of FWAs as adjuvants in pesticide formulations (U.S. Patent No. 5,124,149) and the petitioner has submitted an application to license this technology. The petitioner states that FDA has previously approved the use of related stilbenes (4,4′-bis(2-benzoxazolyl)stilbene, CAS Reg. No. 1533–45–5; 4-(2-benzoxazolyl)-4′-(5-methyl-2-benzoxazolyl)stilbene, CAS Reg. No. 5242–49–9; and 4,4′-bis(5-methyl-2-benzoxazolyl)stilbene, CAS Reg. No. 2397–00–4) as indirect food additives for use in food-contact polymers [21 CFR 178.3297].

A. Residue Chemistry

The petitioner notes that the nature and magnitude of the residue and analytical methods to determine residue levels are not required by EPA at this time. The favorable toxicology profile of 2,2′-(1,2-ethenediyl)bis[5-[[4-[bis(2-hydroxyethyl)amino]-6-phenylamino]-1,3,5-triazin-2-yl]amino]-benzenesulfonate and other FWAs in combination with a negligible increase in expected exposure from the proposed use as an inert ingredient in biopesticides amounts to an insignificant incremental risk to the public health.

B. Toxicological Profile

The petitioner notes that stilbene fluorescent whitening agents have been commercially available for nearly 60 years in the textile, paper and detergent industries and more recently available as FDA-approved indirect food additives. Thus, an extensive body of reliable information has been generated on the toxicology of the stilbene class of chemistry. This complete data base has been developed by industry, academia, and government agencies both in the United States and overseas and can be found in numerous publications on FWAs. The petitioner provides the following toxicological data in support of the submission:

The acute oral LD_{50} in rats for 2,2′-(1,2-ethenediyl)bis[5-[[4-[bis(2-hydroxyethyl)amino]-6-phenylamino]-1,3,5-triazin-2-yl]amino]-benzenesulfonate reported in the literature is 14,500 mg/kg body weight while the acute dermal toxicity is reported to be > 2,000 mg/kg body weight in rabbits. In a single 4 hour exposure acute inhalation study with a related stilbene, no sign of intoxication or mortality to rats at a concentration of 1.65 mg/L was determined (LC_{50} >1.65 mg/L).

In 2–year chronic feeding studies with a related FWA compound, a 40 ppm no observable adverse eEffect level [NOAEL] was established for the rat based upon slightly increased female mortality (unsupported by pathological findings) and a 2,000 ppm NOAEL (highest dose tested) was established for the dog. Additionally, the United States Department of Health and Human Services' National Toxicology Program technical report (TR 412) of 2–year toxicology and carcinogenesis studies using a related stilbene compound concluded there was no evidence of carcinogenic activity attributed to the molecule when fed to rats and mice at up to 25,000 ppm and 12,500 ppm, respectively.

Based on a review of available data, the petitioner believes that FWAs are not genotoxic, not carcinogenic, and do not cause reproductive or developmental effects when tested in

mammals and that there is also no evidence to suggest that FWAs exhibit estrogenic properties.

C. Aggregate Exposure

The petitioner believes that 2,2′-(1,2-ethenediyl)bis[5-[[4-[bis(2-hydroxyethyl)amino]-6-phenylamino]-1,3,5-triazin-2-yl]amino]-benzenesulfonate and stilbene FWAs in general are extensively used as optical brighteners both domestically and internationally. Approximately 30 million pounds are used annually in the United States alone with the majority being used in detergents to enhance the color of laundered clothing. Other uses of stilbenes include incorporation into textiles, paper, paint, and plastics (some of which are used in the food industry). In comparison, the proposed use of 2,2′-(1,2-ethenediyl)bis[5-[[4-[bis(2-hydroxyethyl)amino]-6-phenylamino]-1,3,5-triazin-2-yl]amino]-benzenesulfonate as an inert ingredient in pesticide formulations is not expected to exceed 250,000 pounds annually (< 1% of the total FWA use in the United States).

The petitioner believes that potential routes of non-occupational exposure to FWAs currently include non-dietary (i.e., potential dermal exposure via contact with laundered clothing) and dietary sources (i.e., potential consumption in drinking water, in fish, and as residue of detergents adhering to dishes and cutlery) and consequently, the proposed inert ingredient use of 2,2′(1,2-ethenediyl)bis[5-[[4-[bis(2-hydroxyethyl)amino]-6-phenylamino]-1,3,5-triazin-2-yl]amino]-benzenesulfonate is not expected to significantly increase the aggregate exposure to FWAs.

D. Cumulative Effects

The petitioner believes that data show that the diaminostilbene-disulfonic acid class of FWAs is relatively non-toxic to mammals and, in addition, the proposed use of 2,2′-(1,2-ethenediyl)bis[5-[[4-[bis(2-hydroxyethyl)amino]-6-phenylamino]-1,3,5-triazin-2-yl]amino]-benzenesulfonate, a member of this class of chemistry, will not significantly increase the US population's exposure to FWAs. Thus, the petitioner believes that there is no expectation of significant incremental risk due to the use of 2,2′-(1,2-ethenediyl)bis[5-[[4-[bis(2-hydroxyethyl)amino]-6-phenylamino]-1,3,5-triazin-2-yl]amino]-benzenesulfonate as an inert ingredient in pesticide formulations.

E. Safety Determination

The petitioner considered that toxicology studies conducted with 2,2′-(1,2-ethenediyl)bis[5-[[4-[bis(2-hydroxyethyl)amino]-6-phenylamino]-1,3,5-triazin-2-yl]amino]-benzenesulfonate and other compounds in the stilbene class of chemistry show there is reasonable certainty that no harm to the U.S. population will result from aggregate exposure to FWA residue including all anticipated dietary exposures and all other non-occupational exposures for which there is reliable information. Experimental investigations show that the likelihood of FWAs constituting a danger to human health is so minimal as to be completely negligible.

The petitioner notes that there is no information available to indicate that children or infants would be more sensitive than adults to any toxic effect associated with exposure to 2,2′-(1,2-ethenediyl)bis[5-[[4-[bis(2-hydroxyethyl)amino]-6-phenylamino]-1,3,5-triazin-2-yl]amino]-benzenesulfonate.

F. International Tolerances

There are no Codex maximum residue levels established for residues of 2,2′-(1,2-ethenediyl)bis[5-[[4-[bis(2-hydroxyethyl)amino]-6-phenylamino]-1,3,5-triazin-2-yl]amino]-benzenesulfonate on food or feed crops.

[FR Doc. 97–12914 Filed 5–15–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–733; FRL–5717–6]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–733, must be received on or before June 16, 1997.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Tompkins, Acting Product Manager (PM) 25, Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. 22202, (703) 305–5697; e-mail: tompkins.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–733] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–733] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 8, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. BASF Corporation

PP 9F3804

BASF has submitted a pesticide petition (PP 9F3804) proposing tolerances for residues of the pesticide, sethoxydim, [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 raw agricultural commodities, apricots, cherries (sweet and sour), nectarines, and peaches, at 0.2 parts per million (ppm).

A. Residue Chemistry

1. *Plant and animal metabolism*. The qualitative nature of the residues in plants and animals is adequately understood for the purposes of registration. Metabolic pathways in apricots, cherries (sweet and sour), nectarines, and peaches are similar. Analytical methods for detecting 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 these tolerances was submitted to EPA.

2. *Analytical method*. The proposed analytical method involves extraction, partition, and clean-up. Samples are then analyzed by gas chromatography with sulfur-specific flame photometric detection. The limit of quantitation is 0.05 ppm.

3. *Magnitude of the residues*. Peach samples from eleven trials in six states (CA, GA, SC, NJ, WA, WV) were analyzed for residues of sethoxydim and its metabolites. In none of the trials did the total residue in treated samples exceed 0.10 ppm of sethoxydim equivalents. Preharvest intervals (PHIs) ranged from 10 to 89 days with most samples harvested at a 10 to 20 day PHI. The treatment program included multiple applications at rates varying from 0.5 to 2.0 lb active ingredient (a.i.)/acre. Most samples received three applications of 0.5 lb a.i./acre. BASF is proposing a tolerance of 0.2 ppm to account for loss of residue during the first 30 days of frozen storage.

Sour cherry samples from six trials in five states (MI, PA, OR, UT, WI) and sweet cherry samples from six trials in four states (WA, OR, MI, CA) were analyzed for residues of sethoxydim and its metabolites. In only one of the trials did the total residue in treated samples exceed 0.10 ppm of sethoxydim equivalents. The maximum residue found in this sample was only 0.13 ppm. PHIs ranged from 7 to 17 days with the exception of one sweet cherry sample which had a PHI of 43 days. The treatment program included multiple applications at rates varying from 0.3 or 0.5 lb a.i./acre. Most samples received two applications of 0.5 lb a.i./acre. BASF is proposing a tolerance of 0.2 ppm to account for loss of residue during the first 30 days of frozen storage.

One apricot sample and one nectarine sample from separate trials in California were analyzed for residues of sethoxydim and its metabolites. The apricot sample showed a total residue of less than 0.10 ppm of sethoxydim equivalents. The nectarine sample contained a total of 0.11 ppm of sethoxydim equivalents. The PHI was 17 days for the apricot sample and 21 days for the nectarine sample. The treatment program was two applications of 0.5 lb a.i./acre. BASF is proposing a tolerance of 0.2 ppm to account for loss of residue during the first 30 days of frozen storage.

B. Toxicological Profile

1. *Acute toxicity testing.* Based on the available acute toxicity data, sethoxydim does not pose any acute dietary risks. A summary of the acute toxicity studies follows.

i. Acute oral toxicity, rat: Toxicity Category III; LD_{50}=3,125 mg/kg (male), 2,676 mg/kg (female).

ii. Acute dermal toxicity, rat: Toxicity Category III; LD_{50}>5,000 mg/kg (male and female).

iii. Acute inhalation toxicity, rat: Toxicity Category III; LC_{50} (4-hour)=6.03 mg/L (male), 6.28 mg/L (female).

iv. Primary eye irritation, rabbit: Toxicity Category IV; no irritation.

v. Primary dermal irritation, rabbit: Toxicity Category IV; no irritation.

vi. Dermal sensitization, guinea pig: Waived because no sensitization was seen in guinea pigs dosed with the end-use product Poast (18 percent a.i.).

2. *Subchronic toxicity testing.* A summary of the subchronic toxicity data follows.

A 21–day dermal study in rabbits with a no-observed-adverse-effect-level (NOAEL) of >1,000 mg/kg/day (limit dose). The only dose-related finding was slight epidermal hyperplasia at the dosing site in nearly all males and females dosed at 1,000 mg/kg/day. This was probably an adaptive response.

3. *Chronic toxicity testing.* A summary of the chronic toxicity studies follows.

i. A 1–year feeding study with dogs fed diets containing 0, 8.86/9.41, 17.5/19.9, and 110/129 milligrams (mg)/kilogram (kg)/day (males/females) with a no-observed-effect-level (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.

ii. 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.

iii. 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.

iv. 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.

v. In a rat metabolism study, excretion was extremely rapid and tissue accumulation was negligible.

4. *Developmental toxicity testing.* 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).

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 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).

5. *Reproductive toxicity testing.* 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.

6. *Mutagenicity testing.* Ames assays were negative for gene mutation in Salmonella typhimurium strains TA98, TA100, TA1535, and TA 1537, 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*.

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.

C. Threshold Effects

Based on the available chronic toxicity data, EPA has established the Reference Dose (RfD) for sethoxydim at 0.09 mg/kg bw/day. The RfD for sethoxydim is based on a 1–year feeding study in dogs with a threshold NOEL of 8.86 mg/kg/day and an uncertainty factor of 100.

D. Non-Threshold Effects

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. In the interim, there is little risk from establishment of the proposed tolerances since available studies in rats and mice indicate no carcinogenic effects, there are adequate data to establish a RfD, existing tolerances and the proposed tolerances do not exceed the RfD, and the proposed tolerances utilize less than 1 percent of the RfD. Thus, a cancer risk assessment is not necessary.

E. Aggregate Exposure

1. *Dietary exposure*. For purposes of assessing the potential dietary exposure, BASF has estimated aggregate exposure based on the Theoretical Maximum Residue Contribution (TMRC) from the tolerances of sethoxydim on: apricots at 0.2 ppm, cherries at 0.2 ppm, nectarines at 0.2 ppm, and peaches at 0.2 ppm. (The TMRC is a ''worst case'' estimate of dietary exposure since it is assumed that 100 percent of all crops for which tolerances are established are treated and that pesticide residues are at the tolerance levels.) The TMRC from existing tolerances for the overall US population is estimated at approximately 37 percent of the RfD. Dietary exposure to residues of sethoxydim in or on food from these proposed tolerances increases the TMRC by less than 1 percent of the RfD for the overall US population. BASF estimates indicate that dietary exposure will not exceed the RfD for any population subgroup for which EPA has data [ref. Proposed Rule at 60 FR 13941 March 15, 1995]. This exposure assessment relies on very conservative assumptions-100 percent of crops will contain sethoxydim residues and those residues would be at the level of the tolerance-which results in an overestimate of human exposure.

2. *''Other'' exposure*. Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources. Based on the available studies submitted to EPA for assessment of environmental risk, BASF does not anticipate exposure to residues of sethoxydim in drinking water. There is no established Maximum Concentration Level (MCL) for residues of sethoxydim in drinking water under the Safe Drinking Water Act (SDWA).

BASF has not estimated non-occupational exposure for sethoxydim. Sethoxydim is labeled for use by homeowners on and around the following use sites: flowers, evergreens, shrubs, trees, fruits, vegetables, ornamental groundcovers, and bedding plants. Hence, the potential for non-occupational exposure to the general population exists. However, these use sites do not appreciably increase exposure. Protective clothing requirements, including the use of gloves, adequately protect homeowners when applying the product. The product may only be applied through hose-end sprayers or tank sprayers as a 0.14 percent solution. Sethoxydim is not a volatile compound so inhalation exposure during and after application would be negligible. Dermal exposure would be minimal in light of the protective clothing and the low application rate. Post-treatment (re-entry) exposure would be negligible for these use sites as contact with treated surfaces would be low. Dietary risks from treated food crops are already adequately regulated by the established tolerances. The additional usesapricots, cherries, nectarines, and peacheswill not increase the non-occupational exposure appreciably, if at all. The potential for non-occupational exposure to the general population is, thus, insignificant.

F. Cumulative Exposure

BASF also considered the potential for cumulative effects of sethoxydim and other substances that have a common mechanism of toxicity. BASF is aware of one other active ingredient which is structurally similar, clethodim. However BASF believes that consideration of a common mechanism of toxicity is not appropriate at this time. BASF does not have any reliable information to indicate that toxic effects produced by sethoxydim would be cumulative with clethodim or any other chemical; thus BASF is considering

only the potential risks of sethoxydim in its exposure assessment.

G. Safety Determination

1. *U.S. population*. Reference Dose (RfD), using the conservative exposure assumptions described above, BASF has estimated that aggregate exposure to sethoxydim will utilize <38 percent of the RfD for the US population. EPA generally has no concern for exposures below 100 percent of the RfD. Therefore, based on the completeness and reliability of the toxicity data, and the conservative exposure assessment, BASF concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of sethoxydim, including all anticipated dietary exposure and all other non-occupational exposures.

2. *Infants and children*. Developmental toxicity was observed in a developmental toxicity study using rats but was not seen in a developmental toxicity study using rabbits. In the developmental toxicity study in rats 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) was determined. 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). Since developmental effects were observed only at doses where maternal toxicity was noted, the developmental effects observed are believed to be secondary effects resulting from maternal stress.

3. *Reproductive toxicity*. 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) produced no reproductive effects during the course of the study. Although the dose levels were insufficient to elicit a toxic response, the Agency has considered this study usable for regulatory purposes and has established a free-standing NOEL of 3,000 ppm (approximately 150 mg/kg/day) [ref. Proposed Rule at 60 FR 13941].

4. *Reference dose*. Based on the demonstrated lack of significant developmental or reproductive toxicity BASF believes that the RfD used to assess safety to children should be the same as that for the general population, 0.09 mg/kg/day. Using the conservative exposure assumptions described above, BASF has concluded that the most sensitive child population is that of children ages 1 to 6. BASF calculates the exposure to this group to be <75 percent of the RfD for all uses (including those proposed in this document). The proposed tolerances in apricots, cherries, nectarines, and peaches represent an exposure to this group of <1 percent of the RfD. Based on the completeness and reliability of the toxicity data and the conservative exposure assessment, BASF concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the residues of sethoxydim, including all anticipated dietary exposure and all other non-occupational exposures.

H. Other Considerations

The nature of the residue is adequately understood, and practical and adequate analytical methods are available for enforcement purposes. Enforcement methods for sethoxydim are listed in the Pesticide Analytical Manual, Vol. II (PAM II). Enforcement methods have also been submitted to the Food and Drug Administration for publication in PAM II.

There is no reasonable expectation that secondary residues will occur in milk, eggs or meat of livestock and poultry from the proposed uses of sethoxydim on apricots, cherries, nectarines, and peaches; there are no livestock feed items associated with these commodities.

I. International Tolerances

A maximum residue level has not been established for sethoxydim in apricots, cherries (sweet and sour), peaches, and nectarines by the Codex Alimentarius Commission.

2. Monsanto Company

PP 8F2128

Monsanto Company has submitted pesticide petition (PP 8F2128) proposing the establishment of tolerances for residues of the herbicide triallate (*S*-2,3,3, trichloroallyl diisopropyl thiocarbamate) and its metabolite 2,3,3,-trichloro-2-propene sulfonic acid (TSCPA) expressed as the parent equivalent, in on on the raw agricultural commodities sugarbeet roots at 0.1 ppm and sugarbeet foliage at 0.5 ppm.

A. Toxicological Profile

Monsanto has submitted numerous toxicology studies in support of triallate. The following are summaries of key toxicology studies.

1. Several acute toxicology studies place technical triallate in acute toxicity category III for acute oral and dermal toxicity, primary eye and dermal irritation, and in toxicity category IV for acute inhalation toxicity. Triallate is not a skin sensitizer. The NOEL for acute oral toxicity in rats is 50 mg/kg with a LOEL of 100 mg/kg based on flat-footed appearance of the hindlimbs observed at the 100 mg/kg dose level.

2. A more thorough acute neurotoxicity study in rats was conducted in which the observers were unaware of treatment level. In this acute neurotoxicity study rats were administered gavage dosage levels of 0, 60, 300, or 600 mg/kg. The LOEL and NOEL of this study was determined to be 300 mg/kg and 60 mg/kg, respectively. The LOEL was based on a transient decrease in motor activity detected at the time of peak effect (7 hr, postdosing). No gross pathological findings were present; neurohistopathological examinations did not reveal any treatment-related lesions in either the central or peripheral nervous systems. Abnormal behavioral effects were detected at the 600 mg/kg dose but not at any of the lower dose levels.

3. A subchronic neurotoxicity study in rats exposed for 13–weeks through the diet to 0, 100, 500 or 2,000 ppm triallate (0,6.38, 32.9, or 128.8 mg/kg/day, males, respectively; 0, 8.14, 38.9, or 146.6, females, respectively).The LOEL for systemic toxicity and neurotoxicity was 500 ppm (mg/kg/day: 32.9, males; 38.9, females); the NOEL was 100 ppm (mg/kg/day: 6.38, males; 8.14, females). The LOEL was based on treatment-related lesions in the spinal cord and peripheral nervous systems. Abnormal behavioral effects were detected at the 2,000 ppm level but not at any of the lower dose levels.

4. A 2–year feeding study with dogs fed dosage levels of 0, 1.275, 4.25 and 12.75 milligrams/kilograms/day (mg/kg/day) with a no-observed effect level (NOEL) of 1.275 mg/kg/day and a LEL of 4.25 mg/kg/day based on increased liver weight, elevated serum alkaline phosphate values, and increased hemosiderin deposition. The RfD for triallate is 0.013 mg/kg/day based on the NOEL of 1.275 mg/kg/day and an uncertainty factor of 100 for intra- and inter-species variation. Cholinesterase activity in plasma, erythrocytes and brain was not inhibited after 1.5, 3, 6, 12, 18 and 24 months of exposure.

5. A second chronic dog study was conducted in which dogs were administered gelatin capsules containing doses of 0, 0.5, 2.5, or 15 mg triallate/kg/day for 1–year. The LEL based on an increase in serum alkaline

phosphatase level was 15 mg/kg/day and the NOEL was 2.5 mg/kg/day.

6. A 2–year chronic feeding/carcinogenicity study in B6C3F1 mice fed dosage levels of 0, 3, 9, or 37.5 mg/kg/day resulted in a statistically significant increased incidence of hepatocellular carcinomas in males at 37.5 mg/kg/day and a positive trend and a borderline significant increase in females at 37.5 mg/kg/day. For chronic toxicity, the NOEL was 3 mg/kg/day and the LEL was 9 mg/kg/day. The LEL was based on increases in liver weights; the incidence of altered hepatic foci of the liver; splenic hematopoiesis and blood glucose levels in males at 60 and 250 ppm.

7. A 2–year chronic feeding/carcinogenicity study in male and female rats fed dose levels of 0, 0.5, 2.5, and 12.5 mg/kg/day resulted in an increased incidence in renal tubular cell adenoma above historical control levels. Although no absolute pair-wise statistical significance was found, renal tubular cell adenoma is considered a rare tumor type making this finding biologically significant. For chronic toxicity, the NOEL was 2.5 mg/kg/day and the LEL was 12.5 mg/kg/day. The LEL was based on decreased survival in high-dose males and females, decreased mean body weight in high-dose males, and increased adrenal weights in high-dose males.

8. A chronic/oncogenicity study of triallate was also conducted in hamsters at 50, 300, or 2,000 ppm for 79 (females) or 95 (males) weeks. The objective of this study was to see if triallate induces melanotic changes (nodular aggregated of melanocyte, possibly premalignant) in skin of hamsters similar to those induced by diallate, a compound structurally similar to triallate. There were no increases in either non-neoplastic or neoplastic lesions in any organs. For chronic toxicity, the NOEL was 300 ppm and LEL was 2,000 ppm based on a decrease in body weight gain and corresponding decrease in food consumption by males fed the 2,000 ppm diet during the first 13 weeks of the study but not thereafter.

9. A 2–generation reproduction study with rats fed dose levels of 0, 50, 150 or 600 ppm resulted in a reproductive NOEL of 150 ppm and a LEL of 600 ppm. Treatment-related reproductive effects were: reduced pregnancy rates; shortened gestation period; increased neonate mortality in the F2b litter; reduced pup weights at birth in the F2b litter; and reduced pup weights in late lactation in all litters. These effects were only observed in rats treated with the highest dose level which also caused maternal toxicity was manifested by an increase in mortality, decrease in body weight, increase in chronic nephritis, and head bobbing and circling. For maternal toxicity, the LEL was 600 ppm and NOEL was 150 ppm.

10. A developmental toxicity study in rats fed dose levels of 0, 10, 30, or 90 mg/kg/day during gestation days 6-21 resulted in a developmental toxicity NOEL greater than 90 mg/kg/day. For fetotoxicity, the LEL was 90 mg/kg/day and the NOEL was 30 mg/kg/day based on reduced body weight, reduced ossification of the skull, and malaligned sternebrae. For maternal toxicity, the LEL was 90 mg/kg/day and the NOEL was 30 mg/kg/day based on reduction in maternal body weight. The teratogenic NOEL was > 90 mg/kg/day.

11. A developmental toxicity study in rabbits fed doses of 0, 5, 15, and 45 mg/kg/day on gestation days 6 through 28 resulted in a developmental toxicity NOEL greater than 45 mg/kg/day. For fetotoxicity, the LEL was 15 mg/kg/day and the NOEL was 5 mg/kg/day based on an increase in fused sternebrae, increased number of bent hyoid arch bones, as well as decreased body weight. The NOEL was >45 mg/kg/day for teratogenicity.

12. Numerous mutagenicity assays have been conducted with triallate resulting in mixed results. Triallate gave a positive response for base pair conversions in Salmonella strains TA100 and TA1535 with and without activation and negative results without activation in Ames assays. Triallate was positive for mitotic recombination in *Saccharomyces cerevisiae* strain D3 but was negative for gene conversion in strain D4. The mouse lymphoma gene mutation assay produced both positive results for forward mutations at the $TK^{+/-}$ locus with and without activation and negative results at this locus. Triallate was nonmutagenic in a dominant lethal test with mice given a single intraperitoneal injection; this study however, was considered inadequate by current test guideline/standards. Triallate did not induce gene mutations (HGPRT) locus) in Chinese hamster ovary cells (CHO) with and without metabolic activation. It gave a positive response for sister chromatid exchanges (SCEs) in CHO cells both with and without metabolic activation. Triallate did not induce unscheduled DNA synthesis in rat hepatocytes. In an *in vivo* cytogenetic assay, no mutagenic response was seen in the bone marrow cells of hamsters. Overall, triallate is genotoxic in *in vitro* systems and negative in *in vivo* systems and is considered a genotoxic compound.

B. Threshold Effects

1. *Chronic effects*. Based on a complete and reliable toxicity database, the EPA has adopted a reference dose (RfD) value of 0.013 mg/kg bwt/day using the NOEL of 1.275 mg/kg bwt/day from a 2–year dog feeding study and an uncertainty factor of 100. The endpoint effect in this study was increased liver weights and hemosiderin and serum alkaline phosphate (SAP) levels.

2. *Acute effects*. EPA has determined that the appropriate NOEL to use to assess safety of acute exposure is 5 mg/kg bwt/day from a developmental toxicity study in rabbits, based in increases in the incidences of skeletal malformations in rabbit fetuses. EPA has concluded that the subpopulation of concern for this endpoint are females older than 13 years old.

C. Non-Threshold Effects

Carcinogenicity. Triallate has been classified by EPA as Group C - possible human carcinogen. EPA based this classification on a statistically significant increase in hepatocellular tumors in male mice, with a positive trend and a borderline significant increase in females. In addition, the increased incidence of renal tubular cell adenoma, a rare tumor type, in male rats was considered by EPA to be biologically significant although no absolute pair-wise statistical significance was found. Triallate is considered genotoxic and has structural similarities to carcinogenic analogues. EPA is currently applying the extrapolation model approach for risk assessment and has calculated the upper bound potency factor Q_1* to be 0.08320 $(mg/kg/day)^{-1}$.

D. Aggregate Exposure

For purposes of assessing the potential dietary exposure, the theoretical maximum residue concentration (TMRC) and anticipated chronic dietary risk assessment based on exposure to all crops for which triallate is labelled is an appropriate estimate of aggregate exposure. EPA has notified the petitioner that these analyses include permanent tolerances of 0.05 ppm for peas, lentils, barley, and wheat, as established under 40 CFR 180.314. Tolerances are also established for canary grass; however, EPA's Dietary Risk Evaluation Section (DRES) does not have consumption figures for this RAC, and its contribution is expected to be negligible. Anticipated residues, and 100 percent of crop treated was used for sugarbeet sugar. Sugarbeet foliage is a potential animal feed item associated with this use. However, based on the

results of animal metabolism studies, EPA has concluded that secondary residues are not expected to occur in meat, milk, poultry, and eggs as a result of this proposed use.

EPA has also conducted an acute dietary exposure assessment. It is EPA policy to use ''high-end'' residue level estimates for acute exposure analyses; in this case, tolerance levels were used for all commodities.

Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources. Based on the available studies used in EPA's assessment of environmental risk, triallate appears to be moderately persistent and immobile to highly immobile in different soils. EPA's ''Pesticides in Ground Water Database'' (EPA 734–122–92–001, September 1992), shows no detections for triallate in ground water, and it does not exceed the proposed criteria for establishing a pesticide as restricted use due to ground water concerns. It was not a target of EPA's National Survey of Wells for Pesticides, and is not listed as a unregulated contaminant for monitoring in drinking watersupplies under the Safe Drinking Water Act. No Maximum Contaminant Level or Health Advisory levels have been established for triallate.

Previous experience with persistent and immobile pesticides for which there have been available data to perform quantitative risk assessments have demonstrated that drinking water exposure is typically a small percentage of the total exposure when compared to the total dietary exposure. This observation holds even for pesticides detected in wells and drinking water at levels nearing or exceeding established MCLs. Based on this experience and considering the low fraction of a percent of the RfD (<.04 percent) occupied by dietary exposure to triallate, combined exposure from drinking water and dietary exposure would not be expected to result in an ARC that exceeds 100 percent of the RfD. Therefore, potential triallate residues in drinking water are not likely to pose a human health concern.

EPA consideration of a common mechanism of toxicity is not appropriate at this time since there is no information to indicate that toxic effects produced by triallate would be cumulative with those of any other chemical compound. Triallate is a thiocarbamate herbicide. Thiocarbamate herbicides are not applied to any significant degree in areas where triallate would be used to control wild oats in sugarbeet crops. Thiocarbamates are only used to a small extent in other crops. Hence, dietary exposure to thiocarbamate herbicides is expected to be minimal. Considering the low fraction of the percent of the RfD (<.04 percent) occupied by dietary exposure and the minimal exposure levels to other thiocarbamate herbicides through the diet; the combined exposure to other thiocarbamate herbicides would not be expected to pose a human health concern. There is also no data to indicate that there are similar mechanisms of toxicity between triallate and carbamate insecticides that inhibit cholinesterase activity. Triallate does not inhibit cholinesterase activity in plasma, erythrocytes and brain in dogs after chronic exposure to triallate. Triallate does not cause symptoms typical of cholinesterase inhibition in rats after acute or subchronic exposure to triallate.

E. Determination of Safety for U.S. Population and Sub-populations.

1. *Upper bound carcinogenic exposure*. Based on EPA's Q_1* value of 0.08320 $(mg/kg/day)^{-1}$, the upper bound cancer risk contributed by all the published uses, plus this new use on sugarbeets was calculated by EPA to be 1.7×10^{-7} for the U.S. Population in general; risks from the established uses contribute approximately 1×10^{-7} to this risk, and the proposed use on sugarbeets contributes approximately 0.7×10^{-7}. The sub-population with the highest exposure level were children (1 to 6 years old) which has an upper bound cancer risk was 4.2×10^{-7}. These levels of risk are below the level of risk generally considered to be of concern by EPA (1×10^{-6}). EPA has concluded that the dietary cancer risk posed by use of triallate is not considered to be of concern.

2. *Chronic dietary exposure*. Using anticipated residues and realistic estimates of percent of crop treated, the anticipated residue concentration (ARC) for the overall U.S. Population is calculated by EPA to be 0.000002 mg/kg bwt/day, representing 0.01 percent of the RfD, for established uses and this proposed use on sugarbeets. The ARCs for the U.S. Population and the 22 population subgroups all utilized <0.04 percent of the RfD, with the highest exposed subgroup, being children (1 to 6 years old), with 0.035 percent of the RfD utilized. EPA has concluded that the chronic dietary risk exposure from triallate appears to be minimal for this petition for use on sugarbeets, and does not exceed the RfD for any of the DRES subgroups.

3. *Acute dietary exposure*. EPA used ''high-end'' residue level estimates for acute exposure analyses; in this case, tolerance levels were used for all commodities. Since the endpoint used for risk assessment of the acute risk is derived from a rabbit developmental study, EPA concluded that the population subgroup of concern would be females (13+ years old). The MOE value calculated for this subgroup is 12,500, which is well above the level considered by EPA to be of concern (>100). EPA has concluded that there is little concern for acute effects due to dietary exposure to this chemical.

4. *Conclusion*. Based on the above risk assessments, there is a reasonable certainty that no harm will result from aggregate exposure to triallate residues.

F. Determination of Safety for Infants and Children

In assessing the potential for additional sensitivity of infants and children to residues of triallate, the developmental toxicity studies in the rat and rabbit and the 2–generation reproduction study in the rat should be considered. 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 results of these studies indicate that triallate is not a specific teratogen or reproductive toxin. The only evidence of developmental toxicity occuring below maternally toxic doses was an increase in fused sternebrae, increase number of bent hyoid arch bones, as well as decreased body weight in rabbits. In most instances, fusion only involved two adjacent sternebrae and not the entire chain. Consequently, this type of skeletal defect is considered a minor anomaly rather than a major malformation. The incidence of bent hyoid arch bones was increased from control values but within the laboratory's historical control range. The LEL for fetotoxicity in rabbits was considered by EPA to be 15 mg/kg/day and the NOEL was 5 mg/kg/day.

The FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for completeness of the database or for significant developmental effects. The toxicological database relative to pre- and post-natal effects of triallate is complete. There are no developmental effects that are of substantial concern. Thus, an additional safety factor is not necessary.

The cancer risk and percent of the RfD that will be utilized by aggregate exposure to residues of triallate is less than 1 x 10^{-6} and 0.04 percent of the RfD, respectively, for all populations and subgroups including infants and children. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, it is concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate exposures to triallate.

G. Estrogenic Effects

The toxicity studies required by EPA for the registration of pesticides measure numerous endpoints with sufficient sensitivity to detect potential endocrine-modulating activity. No effects have been identified in subchronic, chronic, developmental, or reproductive toxicity studies to indicate any endocrine-modulating activity by triallate. The subchronic and chronic toxicity studies examines tissues from the male and female reproductive system. The multi-generation reproduction study in rodents is a complex study design which measures a broad range of endpoints in the reproductive system and in developing offspring that are sensitive to alterations by chemical agents. Triallate only caused effects in the reproduction study at doses that were maternally toxic including an increase in mortality. Thus, these results demonstrate that triallate is not a specific reproductive toxin.

H. Chemical Residue

Permanent tolerances are established for triallate parent at 0.05 ppm for peas, lentils, barley and wheat, as established under 40 CFR 180.314. Triallate is metabolized in plants and animals to one major metabolite, TCPSA (2,3,3-trichloroprop-2-enesulfonic acid), and numerous natural constituents. Since the establishment of permanent tolerances for triallate, EPA has decided that TCPSA should also be regulated. Based on results of residue trials, tolerances have been proposed by Monsanto for combined residues of triallate and TCPSA in sugarbeet commodities at 0.1 ppm in sugarbeet roots, 0.5 ppm in sugarbeet tops, and 0.2 ppm in sugarbeet pulp. A practical method for determining triallate has been approved by EPA and is available from the Field Operations Division, Office of Pesticide Programs. Monsanto is in the process of developing a practical method for TCPSA. These methods include extraction followed by partitioning with methylene chloride to isolate triallate fromTCPSA. The triallate portion is eluted through a Florsil clean-up column, concentrated and quantitated by capillary GC using electron capture detection (ECD). The TCPSA portion is isolated using a phase transfer catalyst, derivatized cleaned up using SPE, and quantitated by capillary GC using ECD. Residue studies show that TCPSA is the major residue in sugarbeet foliage, but is not a significant residue in sugarbeet roots since it was not detected above the lower limit of method validation (0.01 ppm) when triallate was applied at maximum application rates. Since sugarbeet foliage seldom enters interstate commerce, EPA has informed the petitioner that enforcement of the proposed tolerances would be limited to sugarbeet roots and dried pulp. As triallate is the primary residue in sugarbeet roots and dried pulp, EPA has concluded that the currently available enforcement for parent only is adequate to enforce the tolerances on a time-limited basis.

Sugarbeet foliage is considered by EPA as an animal feed item. However, EPA has informed the petitioner that based on animal metabolism studies and animal residue studies, secondary residues are not expected to occur in meat, milk, poultry, and eggs as a result of this proposed use.

I. Environmental Fate

Laboratory studies indicate that triallate degrades in soil with a half-lives ranging from 18 to 21 days. Field dissipation studies show that triallate degrades with half-lives ranging from 20 to 190 days, but 190 days is clearly an outlier based on all other data. Average field half-life from all other locations is 49 days. Triallate metabolizes to CO_2, bound residues, and TCPSA. Triallate and TCPSA do not appear to move below a 6-inch depth.

In a laboratory study conducted with worst-case conditions, 50 percent of applied triallate volatized from agricultural sand with a very low organic content. Triallate volatility decreases from soils with higher organic content since triallate binds to organic matter in the soil. Triallate is typically soil incorporated when applied so volatization is minimized. Triallate is fairly stable to hydrolysis and photolysis.

Triallate is not likely to leach into ground water. Triallate was immobile in batch adsorption/desorption studies, and soil column and soil tlc results confirmed its low mobility. Triallate is unlikely to runoff into surface water, it would stick to the soil. If triallate did get into surface water, it would be part of the sediment and undergo microbial degradation.

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BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–734; FRL–5717–7]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–734, must be received on or before June 16, 1997.

ADDRESSES: By mail submit written comments to: Public Response and Program Resources Branch, Field Operations Divison (7505C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Product Manager, (PM) 23, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 237, CM#2 1921 Jefferson Davis

Hwy., Arlington, VA 22202, (703) 305-6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports grantinig of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–734] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–734] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 7, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. E. I. DuPONT

PP 4F4367

EPA has received a pesticide petition (PP) 4F4367 pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. Section 346a(d), by the Food Quality Protection Act of 1996 (Pub. L. 104–170, 110 Stat. 1489) from E. I. DuPont de Nemours and Co., Inc. (DuPont), Barley Mill Plaza, P.O. Box 80083, Wilmington, DE 19880–0038, proposing to amend 40 CFR 180.445 by establishing a tolerance for residues of the herbicide bensulfuron methyl, (methyl-2[[[[[(4,6-dimethoxy-pyrimidin-2-yl)amino] carbonyl]amino] sulfonyl]methyl]benzoate) in or on crayfish at 0.05 ppm. The petitioner has also proposed an amendment to the directions for use for Londax* herbicide, to permit crayfish farming in treated rice fields. 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.

An adequately validated analytical method is available for enforcement purposes.

A. Residue Chemistry

1. *Plant metabolism*. The qualitative nature of the residues of bensulfuron methyl in rice is adequately understood. Metabolism studies with bensulfuron methyl indicate the major metabolic pathway being oxidative *o*-dealkylation of the parent to a desmethyl metabolite. The desmethyl metabolite is cleaved at the C-N bond to form sulfonamide which quickly undergoes ring closure forming homosaccharin; the end product. Hydroxylation of the 5 position of the pyrimidine ring forms a hydroxyl metabolite which can also be cleaved to form sulfonamide. An alternative pathway is the direct cleavage of the C-N bond in the parent to sulfonamide. One side reaction may lead to the formation of a free acid metabolite. CBTS previously concluded that due to the very low level of total residue, the small percentage of the hydroxyl and free acid metabolites present, and no expressed concerns over the low levels of residue in rice plants for homosaccharin, sulfonamide, and the desmethyl metabolite, the only residue of concern in rice plants (grain and straw) was the parent herbicide, bensulfuron methyl. In consideration of PP 4F4367 CBTS has again concluded that the nature of the residue in crayfish is adequately understood and that the only residue of concern is the parent, bensulfuron methyl.

2. *Analytical method*. There is an adequately validated practical analytical method available using HPLC-UV with column and eluent switching, to measure levels of bensulfuron methyl in or on crayfish with a limit of quantitation that allows monitoring of crayfish at or above the proposed tolerance level.

3. *Magnitude of the residue*. Crayfish field trial residue data show that bensulfuron methyl residues will not exceed the proposed tolerance of 0.05 ppm on crayfish. No detectable residues at a limit of quantitation (LOQ) of 0.025 ppm were found in whole body or cooked crayfish at 1, 3, 7, 14, or 21 days after bensulfuron methyl application. In consideration of PP 4F4367 CBTS has concluded that processing data for crayfish is not required.

B. Toxicological Profile

1. *Acute toxicity*. Bensulfuron methyl technical has been placed in EPA Toxicity Category III for acute dermal toxicity based on the test article being nonlethal and nonirritating at the limit dose of 2,000 mg/kg (highest dose tested). Bensulfuron methyl has been placed in Category IV for the remaining acute toxicity tests based on the following: A rat acute oral study with an LD_{50} of >5,000 mg/kg; a rat acute inhalation study with an LC_{50} of >5.0 mg/l; and primary eye and dermal irritation tests that demonstrated no significant irritation in the rabbit. A dermal sensitization test with bensulfuron methyl technical in guinea pigs demonstrated no significant effects. Based on these results, DuPont believes that bensulfuron methyl represents a minimal acute toxicity risk.

2. *Genotoxicity*. Bensulfuron methyl technical was negative (non-mutagenic) in the Ames microbial mutation assay using four strains of *Salmonella typhimurium* and in a hypoxanthine-guanine phosphoribosyl transferase gene mutation assay using Chinese hamster ovary cells. In an *in vivo* bone marrow chromosome study in which

rats were dosed with 0, 500, 1,500 or 5,000 mg/kg of bensulfuron methyl technical, no dose related toxicity or effects on mitotic index or chromosome aberrations were observed. In an *in vitro* sister chromatid exchange assay Chinese hamster ovary cells were dosed with bensulfuron methyl technical at concentrations ranging from 0.135 to 2.7 mM. A slight (1.4 fold) increase in sister chromatid exchanges was observed in the nonactivated system at the maximum concentration however, a negative response was observed in the activated system at the same concentration. In an *in vitro* assay to assess unscheduled DNA synthesis in primary rat hepatocytes, bensulfuron methyl technical was negative. Based on the weight of these data, DuPont believes that bensulfuron methyl is neither genotoxic nor mutagenic.

3. *Reproductive and developmental toxicity*. A two generation, 4 litter reproduction study with CD rats treated at dietary levels of 0, 50, 750, or 7,500 ppm of bensulfuron methyl failed to reveal any evidence suggestive of an adverse effect on reproductive potential. A reproductive NOEL was demonstrated at the highest dose tested of 7,500 ppm (309 and 405 mg/kg/day in males and females respectively). In a developmental toxicity study with bensulfuron methyl technical, pregnant rats were administered oral doses of 0, 50, 500 or 2,000 mg/kg/day on gestation days 7–16. There were no indications of compound related teratogenicity or maternal effects at any dose. Fetuses from the 200 mg/kg group exhibited signs of minimal toxicity, which included an increased incidence of minor skeletal variations. These consisted of extra ossification centers in the lumbar region and incompletely ossified sternebrae and hyoid. The fetal NOEL was 500 mg/kg/day based on these observations at the high dose. In a developmental toxicity study with bensulfuron methyl technical, pregnant rabbits were administered oral doses of 0, 30, 300 or 1,500 mg/kg/day on gestation days 7–19. Clinical signs of maternal toxicity and some decrease in fetal weight gain at the high dose defined maternal and fetotoxic NOEL's at 300 mg/kg/day. There were no dose related fetal malformations or variations. A teratogenic NOEL of 1,500 mg/kg/day was defined. Based on the weight of these data, DuPont believes that bensulfuron methyl is not a reproductive toxicant. Developmental effects observed in the absence of maternal toxicity were minimal, were only observed in the rat and had a clearly defined NOEL. This NOEL, 500 mg/kg/day, far exceeds any expected human occupational or consumer exposure.

4. *Subchronic toxicity*. In a 90–day feeding study in rats conducted with bensulfuron methyl technical at dietary levels of 0, 100, 1,500, and 7,500 ppm, the NOEL was 1,500 ppm (93 and 111 mg/kg/day, M/F) and the LEL was 7,500 ppm (474 and 567 mg/kg/day, M/F) based on increased cholesterol, slight reductions in erythrocytes among males, slightly elevated liver weights, and reduced uptake of stain in the cytoplasm of liver cells fixed for histological evaluation in both sexes. The latter was not considered to be associated with an adverse effect. In a 90–day feeding study in mice conducted with bensulfuron methyl technical at dietary levels of 0, 300, 1,000, 3,000 and 10,000 ppm, the NOEL was 1,000 ppm (132 and 133 mg/kg/day, M/F) and the LEL was 3,000 ppm (387 and 407 mg/kg/day, M/F) based on fatty deposition in the cortico-medullary junction of the adrenals in females, and centrilobular hepatocyte swelling and increased liver weights in males and females. In a 90–day feeding study in dogs conducted with bensulfuron methyl technical at dietary levels of 0, 100, 1,000, and 10,000 ppm, the NOEL was 1,000 ppm (32.1 and 36.3 mg/kg/day, M/F) and the LEL was 10,000 ppm (340 and 360 mg/kg/day, M/F) based on elevated alkaline phosphatase and alanine aminotransferase (ALT or SGPT), elevated liver weights, gross liver enlargement and discoloration, and microscopic findings of gall bladder calculus, bile stasis, centrilobular hepatocyte swelling, and vacuolation of the seminiferous tubules at the highest dose tested.

5. *Chronic toxicity/oncogenicity*. A 1–year feeding study in dogs was conducted with bensulfuron methyl technical at dietary levels of 0, 50, 750, and 7,500 ppm. Very little toxicity and no mortality were observed in this study. Gross findings suggest that bensulfuron methyl may have directly irritated the oral mucosa, especially in the high dose males and females. The major target organ was the liver as demonstrated by elevated alkaline phosphatase and SGPT (ALT), elevated liver weights, and microscopic findings of brown pigment in the biliary canaliculi of the liver at the highest dose tested. The defined systemic NOEL is 750 ppm (21.4 and 19.9 mg/kg/day, M/F) and the systemic LEL is 7,500 ppm (237.3 and 222.6 mg/kg/day, M/F). A 2–year combined chronic toxicity and oncogenicity study in mice was conducted with bensulfuron methyl technical at dietary levels of 0, 10, 150, 2,500 and 5,000 ppm. Very little toxicity was observed in this study. There were no dose-related effects on mortality, clinical signs, body weights, food consumption, or food efficiency. The systemic NOEL was 2,500 ppm (226 and 227 mg/kg/day, M/F) and the systemic LEL was 5,000 ppm (455 and 460 mg/kg/day, M/F) based on reduced water consumption; increased alkaline phosphatase, SGOT, SGPT, and total cholesterol; enlarged liver, abdominal cavity ascites, and benign nodules and masses in the liver; increased liver weights; centrilobular hepatocyte swelling, focal hepatocellular necrosis, and increased brown pigment deposition of stellate cells in the liver. There were no oncogenic effects found at the maximum dose of 5,000 ppm (455 and 460 mg/kg/day, M/F). A 2–year combined chronic toxicity and oncogenicity study in rats was conducted with bensulfuron methyl technical at dietary levels of 0, 50, 750 and 7,500 ppm. Bensulfuron methyl caused little toxicity at the doses used in this study. The systemic NOEL was 750 ppm (30 and 40 mg/kg/day, M/F) and the systemic LEL was 7,500 ppm (309 and 405 mg/kg/day, M/F) based on decreased body weight gain in females, increased BUN and creatinine in males, diffuse fatty changes in male livers, and centrilobular hepatocellular hypertrophy and centrilobular hepatocyte cytoplasmic basophilia margination in both sexes. Although effects were minimal to mild for chronic feeding/oncogenicity studies with bensulfuron methyl, these studies have been found acceptable by EPA as noted in the New Chemical Standard Toxicology Chapter for DPX-F5384 (bensulfuron methyl) -''because of the mild toxicity and lack of oncogenic response at substantial maximum doses in the chronic and subchronic studies in rats and mice. There was also a lack of an oncogenic response in structurally related chemicals.''

6. *Animal metabolism*. Disposition and metabolism of bensulfuron methyl were tested in male and female rats at oral doses of 16 an 2,000 mg/kg. Absorption of the radiolabelled test article from the gut was nearly total at both dose levels. The major elimination route was urine for the low-dose groups and feces for the high-dose groups. No measurable quantities of CO_2 or volatile metabolites were released from the lungs. Minute quantities of radioactivity (2.1%) were distributed to the body tissues, chiefly the gastrointestinal tract. Approximately half the administered radioactivity was eliminated by 24 hours in the low-dose groups, and 48

hours in the high dose groups. Nearly 99% was eliminated by the time of sacrifice at 96 hours. This study indicates that bensulfuron methyl has low toxicity and does not accumulate within the body. The major compound eliminated in urine and feces was ODS DPX-F5384 (desmethyl metabolite), formed by demethylation of the pyrimidine ring. The parent compound was found in feces but not in urine.

7. *Metabolite toxicology.* There is no evidence that the metabolites of bensulfuron methyl as identified in either the plant or animal metabolism studies are of any toxicological significance.

8. *Endocrine effects.* No special studies investigating potential estrogenic or other endocrine effects of bensulfuron methyl have been conducted. However, the standard battery of required toxicology studies has been completed. These include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure to doses that far exceed likely human exposures. Based on these studies there is no evidence to suggest that bensulfuron methyl has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*—(i) *food.* For purposes of assessing the potential dietary exposure under these tolerances, an estimate of aggregate exposure is made using the tolerance on rice grain at 0.02 ppm and crayfish at 0.05 ppm. The potential exposure is obtained by multiplying the tolerance level residues by the consumption data which estimates the amount of rice, rice products and crayfish eaten by various population subgroups. Rice straw is fed to animals, thus exposure of humans to residues of rice straw might result if such residues are transferred to meat, milk, poultry, or eggs. However, based on the results of livestock metabolism studies in which no quantifiable residues were reported when feeding levels were approximately 500X the potential dietary burden from feeding bensulfuron methyl treated rice straw, the EPA has concluded that there is no reasonable expectation that measurable residues of bensulfuron methyl will occur in meat or milk. Rice straw is not a poultry feed item, thus no residues are expected in poultry or eggs. In consideration of pesticide petition 4F4367 CBTS has concluded that crayfish do not constitute a significant livestock feed item, and that no additional secondary residues in animal commodities are anticipated from the proposed use. There are no other established tolerances or registered uses for bensulfuron methyl in the United States. Based on a NOEL of 750 ppm (21.4 and 19.9 mg/kg/day, M/F) from the chronic dog toxicity study and a 100–fold safety factor, the reference dose (RfD) is 0.20 mg/kg/day. Assuming residues at tolerance levels and that 100% of the crop is being treated, a theoretical maximum residue contribution (TMRC) of <0.00001 mg/kg/day is estimated. With the above assumptions which clearly overestimate potential human exposure and are a most conservative assessment of risk, dietary (food) exposure to bensulfuron methyl will utilize <0.01% of the RfD.

2. *Dietary exposure*—(ii) *drinking water.* Other potential dietary sources of exposure of the general population to residues of pesticides are residues in drinking water. There is no Maximum Contaminant Level established for residues of bensulfuron methyl. The petitioner has been advised by the EPA that all environmental fate data requirements for bensulfuron methyl have been satisfied and based on these studies and the conditions of use, the potential for finding significant bensulfuron methyl residues in water, with the exception of flooded rice fields, is minimal. However, for purposes of assessing a potential dietary exposure from water an estimated exposure may be made using information from a prior Experimental Use Permit (EUP) which has since been withdrawn without prejudice. Under this EUP bensulfuron methyl was evaluated as an aquatic vegetation management herbicide applied directly to water at a rate identical to it's current registered use in rice. With this prior EUP, a temporary tolerance for bensulfuron methyl residues in potable water of 0.1 ppm was established. Assuming this extreme case scenario with residues at this tolerance level and using a consumption figure of 2 liters per day of drinking water (consistent with the National Primary Drinking Water Regulations —Synthetic Organic and Inorganic Chemicals, (56 FR 3526, January 30, 1991)), a theoretical maximum residue contribution (TMRC) of <0.000004 mg/kg/day was calculated (calculated and reported by the California Department of Food and Agriculture, Division of Pest Management, April, 1989). With the above assumptions which would now reflect an off-label use of bensulfuron methyl, and therefore clearly overestimate potential human exposure, dietary (drinking water) exposure to bensulfuron methyl would still only utilize <0.01% of the RfD.

3. *Non-dietary exposure.* Bensulfuron methyl is not registered for any use which could result in non-occupational, non-dietary exposure to the general population.

D. Cumulative Effects

Bensulfuron methyl belongs to the sulfonylurea class of compounds. Other compounds in this class are registered herbicides. However, the herbicidal activity of the sulfonylureas is due to the inhibition of acetolactase synthase (ALS), an enzyme only found in plants. ALS is part of the biosynthetic pathway leading to the formation of branched chain amino acids. Animals lack ALS and this biosynthetic pathway. This lack of ALS contributes to the low toxicity of the sulfonylurea compounds in animals. There is no evidence to indicate or suggest that bensulfuron methyl has any toxic effects on mammals that would be cumulative with those of any other chemical.

E. Safety Determination

1. *U S population in general.* Based on a complete and reliable toxicity database, the EPA has adopted an RfD value of 0.20 mg/kg/day using the NOEL of 750 ppm (21.4 and 19.9 mg/kg/day, M/F) from the chronic dog toxicity study and a hundredfold safety factor. Using crop tolerance levels, assuming 100% of the crop being treated, a drinking water estimate which is clearly an overestimate based on off-label use, and a complete battery of toxicity data, it is concluded that aggregate exposure to bensulfuron methyl will utilize significantly less than 0.1% of the RfD for either the entire U.S. population or any of the population subgroups for which consumption data is available, including infants and children. EPA generally has no concern for exposure 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 risk to human health. Thus, DuPont believes that there is a reasonable certainty that no harm will result from aggregate exposure to bensulfuron methyl residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of bensulfuron methyl, data from the previously discussed developmental and reproduction toxicity studies were considered. Developmental studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during pre-natal development. Reproduction studies provide information relating to reproductive and other effects on adults

and offspring from pre-natal and post-natal exposure to the pesticide. Based on the weight of these data, DuPont believes that bensulfuron methyl is not a reproductive toxicant. Developmental effects observed in the absence of maternal toxicity were minimal, and were only observed in the rat and at a dose that far exceeds any expected human exposure. FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on current toxicological data requirements, the database for bensulfuron methyl relative to pre-and post-natal effects for children is complete. Further, as the NOEL of 20 mg/kg/day from the 1–year dog study with bensulfuron methyl which was used to calculate the RfD (discussed above), is already lower than any of the NOEL's defined in the developmental and reproductive toxicity studies with bensulfuron methyl, an additional safety factor is not warranted. As stated above, aggregate exposure assessments utilized significantly less than 0.1% of the RfD for either the entire U.S. population or any of the population subgroups for which consumption data was available, including infants and children. Therefore, DuPont believes that it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to bensulfuron methyl residues.

F. International Tolerances

There are no Canadian, Mexican, or Codex MRLs/ tolerances for bensulfuron methyl on rice straw. Compatibility is not a problem at this time.

2. E. I. DuPONT

PP 5F4490

EPA has received a pesticide petition (PP) 5F4490 pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. Section 346a(d), by the Food Quality Protection Act of 1996 (Pub. L. 104-170, 110 Stat. 1489) from E. I. DuPont de Nemours and Co., Inc. (DuPont), Barley Mill Plaza, P.O. Box 80083, Wilmington, DE 19880–0038, proposing to amend 40 CFR 180.445 by amending the existing tolerance for residues of the herbicide bensulfuron methyl (methyl-2[[[[[(4,6-dimethoxy- pyrimidin-2-yl)amino]carbonyl] amino]sulfonyl]methyl]benzoate) in or on the raw agricultural commodity rice straw from 0.05 ppm to 0.3 ppm. The petitioner has also proposed an amendment to the directions for use for Londax* herbicide, to reduce the herbicides application pre-harvest interval from 80 to 60 days. 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.

An adequately validated analytical method is available for enforcement purposes.

A. Residue Chemistry

1. *Plant metabolism*. The qualitative nature of the residues of bensulfuron methyl in rice is adequately understood. Metabolism studies with bensulfuron methyl indicate the major metabolic pathway being oxidative *o*-dealkylation of the parent to a desmethyl metabolite. The desmethyl metabolite is cleaved at the C-N bond to form sulfonamide which quickly undergoes ring closure forming homosaccharin; the end product. Hydroxylation of the 5 position of the pyrimidine ring forms a hydroxyl metabolite which can also be cleaved to form sulfonamide. An alternative pathway is the direct cleavage of the C-N bond in the parent to sulfonamide. One side reaction may lead to the formation of a free acid metabolite. CBTS previously concluded that due to the very low level of total residue, the small percentage of the hydroxyl and free acid metabolites present, and no expressed concerns over the low levels of residue in rice plants for homosaccharin, sulfonamide, and the desmethyl metabolite, the only residue of concern in rice plants (grain and straw) was the parent herbicide, bensulfuron methyl. In consideration of PP 5F4490 CBTS has again concluded that the only residue of concern is the parent, bensulfuron methyl.

2. *Analytical method*. There is an adequately validated practical analytical method available using HPLC-UV with column and eluent switching, to measure levels of bensulfuron methyl in or on rice with a limit of quantitation that allows monitoring of rice grain and straw at or above tolerance levels. EPA has provided information on this method to the Food and Drug Administration for future publication in PAM II.

3. *Magnitude of the residue*. Crop field trial residue data from a 60–day PHI study shows that the established bensulfuron methyl tolerance on rice grain of 0.02 ppm will not be exceeded when Londax* is used as directed, and the tolerance need not be changed. An adequate amount of geographically representative crop field trial residue data support the amended registration request and show that with the 60–day PHI, bensulfuron methyl residues will not exceed the proposed tolerance of 0.3 ppm on rice straw. An adequate bensulfuron methyl rice processing study using rice bearing detectable residues following an exaggerated 5X application shows that bensulfuron methyl does not concentrate in rice bran, hulls, and polished rice; thus no tolerances on these commodities are required.

B. Toxicological Profile

1. *Acute toxicity*. Bensulfuron methyl technical has been placed in EPA Toxicity Category III for acute dermal toxicity based on the test article being nonlethal and nonirritating at the limit dose of 2,000 mg/kg (highest dose tested). Bensulfuron methyl has been placed in Category IV for the remaining acute toxicity tests based on the following: a rat acute oral study with an LD_{50} of > 5,000 mg/kg; a rat acute inhalation study with an LC_{50} of > 5.0 mg/l; and primary eye and dermal irritation tests that demonstrated no significant irritation in the rabbit. A dermal sensitization test with bensulfuron methyl technical in guinea pigs demonstrated no significant effects. Based on these results, DuPont believes that bensulfuron methyl represents a minimal acute toxicity risk.

2. *Genotoxicity*. Bensulfuron methyl technical was negative (non-mutagenic) in the Ames microbial mutation assay using four strains of *Salmonella typhimurium* and in a hypoxanthine-guanine phosphoribosyl transferase gene mutation assay using Chinese hamster ovary cells. In an *in vivo* bone marrow chromosome study in which rats were dosed with 0, 500, 1,500 or 5,000 mg/kg of bensulfuron methyl technical, no dose related toxicity or effects on mitotic index or chromosome aberrations were observed. In an *in vitro* sister chromatid exchange assay Chinese hamster ovary cells were dosed with bensulfuron methyl technical at concentrations ranging from 0.135 to 2.7 mM. A slight (1.4 fold) increase in sister chromatid exchanges was observed in the nonactivated system at the maximum concentration; however, a negative response was observed in the activated system at the same concentration. In an *in vitro* assay to assess unscheduled DNA synthesis in primary rat hepatocytes, bensulfuron methyl technical was negative. Based on the weight of these data, DuPont

believes that bensulfuron methyl is neither genotoxic nor mutagenic.

3. *Reproductive and developmental toxicity.* A two generation, 4 litter reproduction study with CD rats treated at dietary levels of 0, 50, 750, or 7,500 ppm of bensulfuron methyl failed to reveal any evidence suggestive of an adverse effect on reproductive potential. A reproductive NOEL was demonstrated at the highest dose tested of 7,500 ppm (309 and 405 mg/kg/day in males and females respectively). In a developmental toxicity study with bensulfuron methyl technical, pregnant rats were administered oral doses of 0, 50, 500 or 2,000 mg/kg/day on gestation days 7–16. There were no indications of compound related teratogenicity or maternal effects at any dose. Fetuses from the 200 mg/kg group exhibited signs of minimal toxicity, which included an increased incidence of minor skeletal variations. These consisted of extra ossification centers in the lumbar region and incompletely ossified sternebrae and hyoid. The fetal NOEL was 500 mg/kg/day based on these observations at the high dose. In a developmental toxicity study with bensulfuron methyl technical, pregnant rabbits were administered oral doses of 0, 30, 300 or 1,500 mg/kg/day on gestation days 7–19. Clinical signs of maternal toxicity and some decrease in fetal weight gain at the high dose defined maternal and fetotoxic NOEL's at 300 mg/kg/day. There were no dose related fetal malformations or variations. A teratogenic NOEL of 1,500 mg/kg/day was defined. Based on the weight of these data, DuPont believes that bensulfuron methyl was not a reproductive toxicant. Developmental effects observed in the absence of maternal toxicity were minimal, were only observed in the rat and had a clearly defined NOEL. This NOEL, 500 mg/kg/day, far exceeds any expected human occupational or consumer exposure.

4. *Subchronic toxicity.* In a 90–day feeding study in rats conducted with bensulfuron methyl technical at dietary levels of 0, 100, 1,500, and 7,500 ppm, the NOEL was 1,500 ppm (93 and 111 mg/kg/day, M/F) and the LEL was 7,500 ppm (474 and 567 mg/kg/day, M/F) based on increased cholesterol, slight reductions in erythrocytes among males, slightly elevated liver weights, and reduced uptake of stain in the cytoplasm of liver cells fixed for histological evaluation in both sexes. The latter was not considered to be associated with an adverse effect. In a 90–day feeding study in mice conducted with bensulfuron methyl technical at dietary levels of 0, 300, 1,000, 3,000 and 10,000 ppm, the NOEL was 1,000 ppm (132 and 133 mg/kg/day, M/F) and the LEL was 3,000 ppm (387 and 407 mg/kg/day, M/F) based on fatty deposition in the cortico-medullary junction of the adrenals in females, and centrilobular hepatocyte swelling and increased liver weights in males and females. In a 90–day feeding study in dogs conducted with bensulfuron methyl technical at dietary levels of 0, 100, 1,000, and 10,000 ppm, the NOEL was 1,000 ppm (32.1 and 36.3 mg/kg/day, M/F) and the LEL was 10,000 ppm (340 and 360 mg/kg/day, M/F) based on elevated alkaline phosphatase and alanine aminotransferase (ALT or SGPT), elevated liver weights, gross liver enlargement and discoloration, and microscopic findings of gall bladder calculus, bile stasis, centrilobular hepatocyte swelling, and vacuolation of the seminiferous tubules at the highest dose tested.

5. *Chronic toxicity/oncogenicity.* A 1–year feeding study in dogs was conducted with bensulfuron methyl technical at dietary levels of 0, 50, 750, and 7,500 ppm. Very little toxicity and no mortality were observed in this study. Gross findings suggest that bensulfuron methyl may have directly irritated the oral mucosa, especially in the high dose males and females. The major target organ was the liver as demonstrated by elevated alkaline phosphatase and SGPT (ALT), elevated liver weights, and microscopic findings of brown pigment in the biliary canaliculi of the liver at the highest dose tested. The defined systemic NOEL is 750 ppm (21.4 and 19.9 mg/kg/day, M/F) and the systemic LEL is 7,500 ppm (237.3 and 222.6 mg/kg/day, M/F). A 2–year combined chronic toxicity and oncogenicity study in mice was conducted with bensulfuron methyl technical at dietary levels of 0, 10, 150, 2,500 and 5,000 ppm. Very little toxicity was observed in this study. There were no dose-related effects on mortality, clinical signs, body weights, food consumption, or food efficiency. The systemic NOEL was 2,500 ppm (226 and 227 mg/kg/day, M/F) and the systemic LEL was 5,000 ppm (455 and 460 mg/kg/day, M/F) based on reduced water consumption; increased alkaline phosphatase, SGOT, SGPT, and total cholesterol; enlarged liver, abdominal cavity ascites, and benign nodules and masses in the liver; increased liver weights; centrilobular hepatocyte swelling, focal hepatocellular necrosis, and increased brown pigment deposition of stellate cells in the liver. There were no oncogenic effects found at the maximum dose of 5,000 ppm (455 and 460 mg/kg/day, M/F). A 2–year combined chronic toxicity and oncogenicity study in rats was conducted with bensulfuron methyl technical at dietary levels of 0, 50, 750 and 7,500 ppm. Bensulfuron methyl caused little toxicity at the doses used in this study. The systemic NOEL was 750 ppm (30 and 40 mg/kg/day, M/F) and the systemic LEL was 7,500 ppm (309 and 405 mg/kg/day, M/F) based on decreased body weight gain in females, increased BUN and creatinine in males, diffuse fatty changes in male livers, and centrilobular hepatocellular hypertrophy and centrilobular hepatocyte cytoplasmic basophilia margination in both sexes. Although effects were minimal to mild for chronic feeding/oncogenicity studies with bensulfuron methyl, these studies have been found acceptable by EPA as noted in the New Chemical Standard Toxicology Chapter for DPX-F5384 (bensulfuron methyl) - ''because of the mild toxicity and lack of oncogenic response at substantial maximum doses in the chronic and subchronic studies in rats and mice. There was also a lack of an oncogenic response in structurally related chemicals.''

6. *Animal metabolism.* Disposition and metabolism of bensulfuron methyl were tested in male and female rats at oral doses of 16 an 2,000 mg/kg. Absorption of the radiolabelled test article from the gut was nearly total at both dose levels. The major elimination route was urine for the low- dose groups and feces for the high-dose groups. No measurable quantities of CO_2 or volatile metabolites were released from the lungs. Minute quantities of radioactivity (2.1%) were distributed to the body tissues, chiefly the gastrointestinal tract. Approximately half the administered radioactivity was eliminated by 24 hours in the low-dose groups, and 48 hours in the high dose groups. Nearly 99% was eliminated by the time of sacrifice at 96 hours. This study indicates that bensulfuron methyl has low toxicity and does not accumulate within the body. The major compound eliminated in urine and feces was ODS DPX-F5384 (desmethyl metabolite), formed by demethylation of the pyrimidine ring. The parent compound was found in feces but not in urine.

7. *Metabolite toxicology.* There is no evidence that the metabolites of bensulfuron methyl as identified in either the plant or animal metabolism studies are of any toxicological significance.

8. *Endocrine effects.* No special studies investigating potential estrogenic or other endocrine effects of bensulfuron methyl have been

conducted. However, the standard battery of required toxicology studies has been completed. These include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure to doses that far exceed likely human exposures. Based on these studies there is no evidence to suggest that bensulfuron methyl has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*--(i) *food*. For purposes of assessing the potential dietary exposure under these tolerances, an estimate of aggregate exposure is made using the tolerance on rice grain at 0.02 ppm. The potential exposure is obtained by multiplying the tolerance level residues by the consumption data which estimates the amount of rice or rice products eaten by various population subgroups. Rice straw is fed to animals, thus exposure of humans to residues of rice straw might result if such residues are transferred to meat, milk, poultry, or eggs. However, based on the results of livestock metabolism studies in which no quantifiable residues were reported when feeding levels were approximately 500X the potential dietary burden from feeding bensulfuron methyl treated rice straw, the EPA has concluded that there is no reasonable expectation that measurable residues of bensulfuron methyl will occur in meat or milk. Rice straw is not a poultry feed item, thus no residues are expected in poultry or eggs. There are no other established tolerances or registered uses for bensulfuron methyl in the United States. Based on a NOEL of 750 ppm (21.4 and 19.9 mg/kg/day, M/F) from the chronic dog toxicity study and a hundredfold safety factor, the reference dose (RfD) is 0.20 mg/kg/day. Assuming residues at tolerance levels and that 100% of the crop is being treated, a theoretical maximum residue contribution (TMRC) of <0.000001 mg/kg/day is calculated. With the above assumptions which clearly overestimate potential human exposure and are a most conservative assessment of risk, dietary (food) exposure to bensulfuron methyl will utilize <0.01% of the RfD.

2. *Dietary exposure*--(ii) *drinking water*. Other potential dietary sources of exposure of the general population to residues of pesticides are residues in drinking water. There is no Maximum Contaminant Level established for residues of bensulfuron methyl. The petitioner has been advised by the EPA that all environmental fate data requirements for bensulfuron methyl have been satisfied and based on these studies and the conditions of use, the potential for finding significant bensulfuron methyl residues in water, with the exception of flooded rice fields, is minimal. However, for purposes of assessing a potential dietary exposure from water an estimated exposure may be made using information from a prior Experimental Use Permit (EUP) which has since been withdrawn without prejudice. Under this EUP bensulfuron methyl was evaluated as an aquatic vegetation management herbicide applied directly to water at a rate identical to it's current registered use in rice. With this prior EUP, a temporary tolerance for bensulfuron methyl residues in potable water of 0.1 ppm was established. Assuming this extreme case scenario with residues at this tolerance level and using a consumption figure of 2 liters per day of drinking water (consistent with the National Primary Drinking Water Regulations -- Synthetic Organic and Inorganic Chemicals, (56 FR 3526, January 30, 1991)), a theoretical maximum residue contribution (TMRC) of <0.000004 mg/kg/day was calculated (calculated and reported by the California Department of Food and Agriculture, Division of Pest Management, April, 1989). With the above assumptions which would now reflect an off-label use of bensulfuron methyl, and therefore clearly overestimate potential human exposure, dietary (drinking water) exposure to bensulfuron methyl would still only utilize <0.01% of the RfD.

3. *Non-dietary exposure*. Bensulfuron methyl is not registered for any use which could result in non-occupational, non-dietary exposure to the general population.

D. Cumulative Effects

Bensulfuron methyl belongs to the sulfonylurea class of compounds. Other compounds in this class are registered herbicides. However, the herbicidal activity of the sulfonylureas is due to the inhibition of acetolactase synthase (ALS), an enzyme only found in plants. ALS is part of the biosynthetic pathway leading to the formation of branched chain amino acids. Animals lack ALS and this biosynthetic pathway. This lack of ALS contributes to the low toxicity of the sulfonylurea compounds in animals. There is no evidence to indicate or suggest that bensulfuron methyl has any toxic effects on mammals that would be cumulative with those of any other chemical.

E. Safety Determination

1. *U.S. population in general*. Based on a complete and reliable toxicity database, the EPA has adopted an RfD value of 0.20 mg/kg/day using the NOEL of 750 ppm (21.4 and 19.9 mg/kg/day, M/F) from the chronic dog toxicity study and a hundredfold safety factor. Using crop tolerance levels, assuming 100% of the crop being treated, a drinking water estimate which is clearly an overestimate based on off-label use, and a complete battery of toxicity data, it is concluded that aggregate exposure to bensulfuron methyl will utilize significantly less than 0.1% of the RfD for either the entire U.S. population or any of the population subgroups for which consumption data is available, including infants and children. EPA generally has no concern for exposure 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 risk to human health. Thus, DuPont believes that there is a reasonable certainty that no harm will result from aggregate exposure to bensulfuron methyl residues.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of bensulfuron methyl, data from the previously discussed developmental and reproduction toxicity studies were considered. Developmental studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during pre-natal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from pre-natal and post-natal exposure to the pesticide. Based on the weight of these data, DuPont believes that bensulfuron methyl is not a reproductive toxicant. Developmental effects observed in the absence of maternal toxicity were minimal, and were only observed in the rat and at a dose that far exceeds any expected human exposure. FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on current toxicological data requirements, the database for bensulfuron methyl relative to pre- and post-natal effects for children is complete. Further, as the NOEL of 20 mg/kg/day from the 1–year dog study with bensulfuron methyl which was used to calculate the RfD (discussed above), is already lower than any of the NOEL's defined in the developmental and reproductive toxicity studies with bensulfuron methyl, an additional safety factor is not warranted. As stated above,

aggregate exposure assessments utilized significantly less than 0.1% of the RfD for either the entire U.S. population or any of the population subgroups for which consumption data was available, including infants and children. Therefore, DuPont believes that it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to bensulfuron methyl residues.

F. International Tolerances

There are no Canadian, Mexican, or Codex MRLs/ tolerances for bensulfuron methyl on rice straw. Compatibility is not a problem at this time.

[FR Doc. 97–12907 Filed 5–15–97; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–732; FRL–5717–4]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–732, must be received on or before June 16, 1997.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, PM 23, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy, Arlington, VA 22202, 703–305–6224, e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–732] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–732] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 7, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

FMC Corporation

PP 6G4615

EPA has received a pesticide petition (PP 6G4615) from FMC Corporation, 1735 Market St., Philadelphia, PA 19103, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a temporary tolerance for the combined residue of the herbicide carfentrazone-ethyl (ethyl-α-2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzene-propanoate) and its major wheat metabolites: carfentrazone-ethyl chloropropionic acid (α, 2-dichloro-5-[4-difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid), 3-hydroxymethyl-F8426-chloropropionic acid (α, 2-dichloro-5-[4-difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid) and 3-desmethyl- F8426 chloropropionic acid (α, 2-dichloro-5-[4-difluoromethyl)-4,5-dihydro-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid) in or on wheat raw agricultural commodities: 0.2 ppm in or on wheat hay, 0.2 ppm in or on wheat straw, 0.2 ppm in or on wheat grain; and establishing tolerance for combined residues of the herbicide carfentrazone-ethyl (ethyl-α-2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzene-propanoate) and its two major corn metabolites: carfentrazone-

ethyl chloropropionic acid (α, 2-dichloro-5-[4-difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid), and 3-desmethyl-F8426 chloropropionic acid (α, 2-dichloro-5-[4-difluoromethyl)-4,5-dihydro-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid) in or on corn raw agricultural commodities: 0.15 ppm in or on corn forage, 0.15 ppm in or on corn fodder, 0.15 ppm in or on corn grain.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on the petitions. The proposed analytical method is GC-MS and is available for enforcement purposes.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act (FQPA) FMC 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 the receipt of the petition. The summary represents the views of FMC; EPA is in the process of evaluating the petition. As required by section 408(d)(3) EPA is including the summary as a part of this notice of filing. EPA may have made minor edits to the summary for the purpose of clarity.

Carfentrazone-ethyl is a postemergent herbicide which controls a broad spectrum of broadleaf weeds at very low field application rates. Carfentrazone-ethyl is particularly effective on Velvetleaf (*Abutilon theophrasti*), Russian Thistle (*Salsola kali*), Pigweeds (*Amaranthus spp*.), Morningglories (*Ipomea spp*.), Lambsquarters (Chenopodium album) and Black Nightshade (*Solanum nigrum*). It is also effective on sulfonylurea-resistant populations of important weeds such as Kochia (*Kochia scoparia*) and Russian Thistle (*Salsola kali*) and on imidazolinone- or sulfonylurea-resistant populations of pigweeds.

Use site: Corn: Broadleaf weeds (including cocklebur, lambsquarters, morningglories, pigweeds, nightshades and velevetleaf); Wheat: Broadleaf weeds (including wild buckwheat, kochia, lambsquarters, mustards, nightshades, pigweeds, Russian thistle and waterhemp).

Use pattern: Carfentrazone-ethyl herbicide is applied postemergence to young actively growing weeds that have emerged from the soil. Typically, the crop has less than eight leaves, and the weeds are less than four inches tall when the product is applied. Crops such as corn and wheat are tolerant to the product at use rates which control selected weeds. The product is mixed in water or liquid nitrogen fertilizer used as the carrier. A nonionic surfactant or liquid nitrogen fertilizer is mixed with the spray solution to enhance weed control. Spray volumes range from 5-40 gallons per acre. Other herbicides may be tank mixed with carfentrazone-ethyl to broaden the weed control spectrum.

A. Residue Chemistry

1. *Plant metabolism*. The qualitative nature of the residues in plants and animals is adequately understood. Residues of carfentrazone-ethyl do not concentrate in the processed commodities. There are no Codex maximum residue levels established for residues of carfentrazone-ethyl on wheat, corn or soybeans.

2. *Analytical method*. There is a practical analytical method available using GC-MS, for detecting and measuring levels of carfentrazone-ethyl 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.

3. *Magnitude of the residue*— i. *Wheat*. F8426 50DF was applied to 28 wheat trials in the major wheat growing regions of the United States. Trials were conducted on both winter wheat (16 trials) and spring wheat (12 trials). Forage samples had total residues ranging from ND (<0.1 ppm) to 0.64 ppm. The maximum total residue in/on any hay sample was 0.24 ppm. The maximum total residue found on any straw sample was an estimated 0.05 ppm. No detectable residues (>0.01 ppm) of carfentrazone-ethyl or any of its metabolites were found in/on any grain sample.

No detectable residues (>0.01 ppm) of carfentrazone-ethyl or its metabolites were found in any of the treated wheat grain or processed commodities. Based on these results, there was no concentration of carfentrazone-ethyl or its acid metabolites into any of the processed parts.

ii. *Corn*. Twenty four field corn trials were conducted in the major corn growing regions of the continental United States with F8426 50DF. No quantifiable residues (>0.05 ppm) of carfentrazone-ethyl or any of its metabolites were found in the analyses of the treated forage, fodder and grain samples except for two forage samples which had residues of 0.05 and 0.10 ppm. The maximum total residue in/on any corn forage sample was 0.10 ppm and on any fodder and grain sample was an estimated 0.01 ppm. No detectable residues of carfentrazone-ethyl or its metabolites were found in any fraction of corn treated. Based on the residue results, there was no concentration of carfentrazone-ethyl and its metabolites into any of the processed parts.

4. *Animal feeding*. There is no need for tolerances in animal meat, milk, poultry or eggs since there is no reasonable expectation of residues in these materials. This is based on the results of cow feeding and poultry metabolism studies, as well as the plant metabolism and crop rotation studies. Transfer factors are extremely low and maximum expected total residues in meat, milk, poultry and eggs would be below the method limit of detection (LOD). The LOD of the methods is, therefore, higher than any individual analyte in any of the matrices. Based on this, since there is no expectation of finite residues in meat, milk, poultry and eggs, no tolerances are being proposed for these commodities. The proposed crop tolerance levels are adequate to cover residues likely to be present from the proposed use of carfentrazone-ethyl. Therefore, no special processing to reduce the residues will be necessary.

B. Toxicological Profile

EPA has reviewed and accepted over 20 separate toxicology studies in support of temporary tolerances for carfentrazone-ethyl; additional studies have been submitted to EPA for review. Carfentrazone-ethyl is not a carcinogen, developmental toxin or a mutagen and has low oral and dermal toxicity to mammals. The following mammalian toxicity studies have been conducted to support the tolerance of carfentrazone-ethyl:

A rat acute oral study with an LD_{50} of greater than 5,000 mg/kg(male) and 5,143 mg/kg (female).

A rat acute dermal LD_{50} of greater than 4,000 mg/kg.

A rat acute inhalation LC_{50} of greater than 5.09 mg/L/4 hour.

A primary eye irritation study in rabbits which showed minimal irritation.

A primary dermal irritation study in rabbits which showed no irritation.

A primary dermal sensitization study which showed no sensitization.

An acute neurotoxicity study in the rat with a systemic NOAEL of 500 mg/kg; the NOAEL for neurotoxicity was greater than 2,000 mg/kg (highest dose tested).

A 28–day feeding study in the rat with a NOEL of 1,000 ppm (74.6 mg/kg/

day for males; 85.2 mg/kg/day for females).

A 90-day feeding study in the rat with a NOEL of 1,000 ppm (57.9 mg/kg/day for males; 72.4 mg/kg/day for females).

A 28–day feeding study in the mouse with a NOEL of 4,000 ppm (571 mg/kg/day) for males and a NOEL of 1,000 ppm (143 mg/kg/day) for females.

A 90–day feeding study in the mouse with a NOEL of 4,000 ppm (approximately 571 mg/kg/day).

A 90–day subchronic neurotoxicity study in the rat with a systemic NOEL of 1,000 ppm (59.0 mg/kg/day for males; 70.7 mg/kg/day for females); the neurotoxicity NOEL was greater than 20,000 ppm (1178.3 mg/kg/day for males; 1433.5 mg/kg/day for females) which was the highest dose tested.

A 24–month chronic feeding/oncogenicity study in the rat with a chronic toxicity NOEL of 200 ppm (9 mg/kg/day) in the male and 50 ppm (3 mg/kg/day) in the female. There was no evidence of an oncogenic response.

A 4–week range-finding study in dogs confirmed that the appropriate route of administration was by capsule and the top dose selected for the 3–month study was the limit dose of 1,000 mg/kg/day.

A 90–day feeding study in dogs with a NOEL of 150 mg/kg/day for both males and females.

A 12–month feeding study in dogs with a NOEL of 50 mg/kg/day.

A mouse oncogenicity study with a carcinogenic NOEL greater than 7,000 ppm (greater than 1,090 mg/kg/day for males; greater than 1,296 mg/kg/day for females) based on no evidence of carcinogenicity at the highest dose tested.

An oral teratology study in the rat with a maternal NOEL of 100 mg/kg/day; the developmental NOAEL was greater than 1,250 mg/kg/day.

An oral teratology study in the rabbit with a maternal NOEL of 150 mg/kg/day; the fetal NOEL was greater than 300 mg/kg/day (highest dose tested) since no fetal effects were observed.

A 2–generation reproduction study in the rat with a NOAEL for systemic toxicity of 500 ppm (P1: 120 mg/kg/day for males and 137 mg/kg/day for females; F1: 134 mg/kg/day for males and 146 mg/kg/day for females); the reproductive NOEL was greater than 4,000 ppm (P1: greater than 323 mg/kg/day for males and greater than 365 mg/kg/day for females; F1: greater than 362 mg/kg/day for males and greater than 409 mg/kg/day for females) since reproductive parameters were not affected at the highest dose tested in the study.

The weight of the evidence of the mutagenicity database including the following is that carfentrazone-ethyl is not mutagenic.

Ames Assay: Negative.

Mouse Micronucleus Assay: Negative.

In vitro Chromosome Aberration - Negative with activation; Positive without activation.

CHO/HGPRT Forward Mutation Assay - Negative.

Unscheduled DNA Synthesis - Negative.

C. Aggregate Exposure

For purposes of assessing the potential dietary exposure, a preliminary dietary risk assessment was conducted based on the Theoretical Maximum Residue Contribution (TMRC) from the tolerances for carfentrazone-ethyl on soybeans at 0.1 ppm, wheat at 0.2 ppm and corn (field) at 0.15 ppm. (The TMRC is a ''worse case'' estimate of dietary exposure since it is assumed that 100 percent of all crops for which tolerances are established are treated and that pesticide residues are present at the tolerance levels.) At this time the dietary exposure to residues of carfentrazone-ethyl in or on food will be limited to residues on soybeans, wheat and corn. There are no other established US tolerances for carfentrazone-ethyl, and there are no registered uses for carfentrazone-ethyl on food or feed crops in the US. In conducting this exposure assessment, the following very conservative assumptions were made--100 percent of soybeans, wheat and corn will contain carfentrazone-ethyl residues and those residues would be at the level of the tolerance which result in an overestimate of human exposure.

Other potential sources of general population exposure to residues of pesticides are residues in drinking water and exposure from non-occupational sources. Studies have indicated that carfentrazone-ethyl will not move into groundwater.

There is no expectation of non-occupational exposure from any other source since the current registration application is the first for carfentrazone-ethyl and is limited to commercial production of corn and wheat. The potential for non-occupational exposure to the general population is, thus, insignificant.

EPA is also required to consider the potential for cumulative effects of carfentrazone ethyl and other substances that have a common mechanism of toxicity. EPA consideration of a common mechanism of toxicity is not appropriate at this time since EPA does not have information to indicate that toxic effects produced by carfentrazone-ethyl would be cumulative with those of any other chemical compounds; thus only the potential risks of carfentrazone-ethyl are considered in this exposure assessment.

Chronic dietary effects. Based on the available toxicity data, FMC believes that the Reference Dose (RfD) for carfentrazone-ethyl is 0.03 milligrams(mg)/kilogram(kg)/day. The RfD for carfentrazone-ethyl is based on the chronic feeding/oncogenicity study in rats with a threshold No-Observed Effect Level (NOEL) of 3 mg/kg/day and an uncertainty factor of 100. EPA recently proposed a tiered approach to estimate acute dietary exposure. The methods proposed by the EPA were reviewed and supported by the FIFRA scientific advisory panel (SAP, 1995). EPA's Tier 1 method is based on the assumption that residue concentrations do not vary. The analysis assumes that all residues have the same magnitude, typically the highest field trial residue or tolerance value. This value is assumed for all points along the consumption distribution, resulting in a distribution of dietary exposure.

For the acute analysis for carfentrazone-ethyl, a Tier 1 analysis was conducted for the overall US population, infants and children 1 to 6 years of age. The analysis incorporated anticipated residue estimates of 0.1 ppm for soybeans, wheat and corn including sweet and pop corn. A NOEL of 3 mg/kg /day with a 100-fold uncertainty factor was used in the calculation. This NOEL was derived from the chronic rat feeding study and represents an extremely excessive worst case scenario. The following margins of exposure (MOE) were calculated (margins of exposure of 100 or more are considered satisfactory):

Population Group	*Margin of Exposure*
US Population	3516
Infants	1804
Children 1 to 6	2057

These MOEs show that there is no acute dietary risk from carfentrazone-ethyl. Using the Guidelines for Carcinogen Risk Assessment, carfentrazone-ethyl should be classified as Group ''E'' for carcinogenicity -- no evidence of carcinogenicity -- based on the results of carcinogenicity studies in two species. There was no evidence of carcinogenicity in an 18–month feeding study in mice and a 2–year feeding study in rats at the dosage levels tested. The doses tested are adequate for identifying a cancer risk. Thus, a cancer risk assessment is not necessary. Using

the conservative exposure assumptions described and based on the completeness and reliability of the toxicity data, the aggregate exposure to carfentrazone-ethyl will utilize 0.61 percent of the RfD for the US population. EPA generally has no concern for exposures below 100 percent of the RfD. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, FMC believes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of carfentrazone-ethyl, including all anticipated dietary exposure and all other non-occupational exposures.

D. Determination of Safety for Infants and Children

In assessing the potential for additional sensitivity of infants and children to residues of carfentrazone-ethyl, EPA considers data from developmental toxicity studies in the rat and rabbit and the 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. Reproduction studies provide information relating to effects on the reproductive capacity of males and females exposed to the pesticide. Developmental toxicity was not observed in developmental toxicity studies using rats and rabbits. In these studies, the rat and rabbit maternal NOELs were 100 mg/kg/day and 150 mg/kg/day, respectively. The developmental NOEL for the rabbit was greater than 300 mg/kg/day which was the highest dose tested and for the rat was 600 mg/kg/day based on increased litter incidences of thickened and wavy ribs. These two findings are not considered adverse effects of treatment but related delays in rib development which are generally believed to be reversible. In a 2–generation reproduction study in rats, no reproductive toxicity was observed under the conditions of the study at 4,000 ppm which was the highest dose tested. FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database relative to pre- and post-natal effects for children is complete and an additional uncertainty factor is not warranted. Therefore, the RfD of 0.03 mg/kg/day is appropriate for assessing aggregate risk to infants and children. Using the conservative exposure assumptions described above, the percent of the RfD that will be utilized by aggregate exposure to residues of carfentrazone-ethyl for non-nursing infants (<1 year old) would be 0.38 percent and for children 1-6 years of age would be 1.56 percent (the most highly exposed group). Based on the completeness and reliability of the toxicity data and the conservative exposure assessment, FMC believes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the residues of carfentrazone-ethyl including all anticipated dietary exposure.

E. Estrogenic Effects

No specific tests have been conducted with carfentrazone-ethyl to determine whether the pesticide may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen.

[FR Doc. 97–12911 Filed 5–15–97; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Fire Administration; Open Meeting: Federal Interagency Committee on Emergency Medical Services (FICEMS)

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of meeting.

Name: Federal Interagency Committee on Emergency Medical Services (FICEMS).

Dates of Meeting: June 5, 1997.

Place: Federal Emergency Management Agency, U.S. Fire Administration, 16825 South Seton Avenue, Building N, Room 309, Emmitsburg, Maryland 21727.

Time: 10:00 a.m.–12:00 Noon.

Proposed Agenda: Review of March 6, 1997 meeting minutes. Discussion of Senate Bill 238 and a proposal from the previous meeting to establish a ''Technology Sub-Committee''. Reports from member agency representatives and a review and discussion of the current ''FICEMS Instruction''.

Status: Open to Federal member agencies (voting) and other interested parties (non-voting).

FOR FURTHER INFORMATION CONTACT: Terry G. Glunt, FICEMS Secretariat, U.S. Fire Administration, 16825 South Seton Avenue, N–315E, Emmitsburg, Maryland 21727; telephone (301) 447–1402.

SUPPLEMENTARY INFORMATION: FICEMS is a Federal interagency committee that meets quarterly to establish effective communication between Federal departments and agencies involved in activities related to emergency medical services. Further, to strengthen the coordination of Federal policies and programs; promote harmony and avoid duplication of efforts; and promote uniformity of standards and policies consistent with existing Federal laws and regulations regarding emergency medical services.

The FICEMS committee consists of a representative from the following Federal departments:

Federal Emergency Management Agency
Department of Agriculture
Federal Communications Commission
Department of Defense
General Services Administration
Department of Health and Human Services
Department of Interior
Department of Transportation
Department of Veterans Affairs
Other Federal departments as approved by the committee

Dated: May 7, 1997.

Donald G. Bathurst,

Deputy U.S. Fire Administrator.

[FR Doc. 97–12897 Filed 5–15–97; 8:45 am]
BILLING CODE 6718–08–M

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. 203–011305–004

Title: Tricontinental Service Agreement.

Parties:

Cho Yang Shipping Co., Ltd.
DSR-Senator Lines.

Synopsis: The proposed amendment provides that the parties consent to any chartering activities which may be affected pursuant to the Hanjin/DSR-Senator Cooperative Management Agreement (FMC Agreement No. 203–011570). The parties have requested a shortened review period.

Agreement No. 232–011475–003.
Title: Hanjin/Tricon Agreement.
Parties:
Hanjin Shipping Co., Ltd.
Co Yang Shipping Co., Ltd.
DSR-Senator Lines.

Synopsis: The proposed modification clarifies that the subject Agreement does not preclude DSR-Senator and/or Hanjin from engaging in any activity (principally joint marketing) authorized by the Hanjin/ DSR-Senator Cooperative Management Agreement (FMC No. 203–011570). The modification also changes the address for Hanjin. The parties have requested shortened review.

Agreement No: 217–011486–002
Title: NL/Tricon Agreement.
Parties:
P&O Nedlloyd B.V.
Cho Yang Shipping Co. Ltd.
DRS-Senator Lines (''DSL'').

Synopsis: The proposed amendment specifies that nothing in this Agreement will preclude DSL from engaging in any activity authorized by the Hanjin/DSR-Senator Cooperative Management Agreement (FMC Agreement No. 203–011570). The parties have requested a shortened review period.

Agreement No. 232–011501–001.
Title: Hanjin/Tricon Panama Agreement.
Parties:
Hanjin Shipping Co., Ltd. (''Hanjin'')
Cho Yang Shipping Co., Ltd.
DSR-Senator Lines.

Synopsis: The proposed amendment specifies that nothing in this Agreement will preclude Agreement parties Hanjin and DSL from engaging in any activity authorized by the Hanjin/DSR-Senator Cooperative Management Agreement (FMC Agreement No. 203–011570). The amendment also reflects an address change for Hanjin. The parties have requested a shortened review period.

Agreement No. 203–011519–002.
Title: Tricon/Hanjin Transpacific Agreement.
Parties:
Hanjin Shipping Co., Ltd. (''Hanjin'')
Cho Yang Shipping Co., Ltd.
DSR-Senator Lines (''DSL'').

Synopsis: The proposed amendment specifies that nothing in this Agreement will preclude Agreement parties Hanjin and DSL from engaging in any activity authorized by the Hanjin/DSR-Senator Cooperative Management Agreement (FMC Agreement No. 203–011570). The amendment also reflects an address change for Hanjin. The parties have requested a shortened review period.

Agreement No. 232–011521–002.
Title: Hanjin/Tricon Far East Services Slot Charter Agreement.
Parties:
Hanjin Shipping Co., Ltd.
Cho Yang Shipping Co., Ltd.
DSR-Senator Lines.

Synopsis: The proposed modification amends article 5.3 of the Agreement to eliminate restrictions on joint marketing by Hanjin and DSR-Senator Lines, as authorized in Agreement No. 203–011570, the Hanjin/DSR-Senator Cooperative Management Agreement. The modification also changes the address for Hanjin. The parties have requested shortened review.

Agreement No. 232–011538–001.
Title: Tricon/Italia Slot Charter Agreement.
Parties:
Italia di Navigazione SpA. (IdN)
Cho Yang Shipping Co., Ltd.
DSR-Senator Lines (''D–SEN'').

Synopsis: The proposed amendment specifies that nothing in this Agreement shall serve to preclude D–SEN from engaging in any activity authorized by the Hanjin/DSR-Senator Cooperative Management Agreement (FMC Agreement No. 203–011570). The parties have requested a shortened review period.

Dated: May 12, 1997.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–12849 Filed 5–15–97; 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 May 30, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Susma Patel, London, England; Suketu Madhusudan Patel (Suku), London, England; Parimal Kantibhai Patel (Perry), London, England; Bharat Muljibhai Amin, London, England; and Dennis John Lloyd King, Surrey, England; collectively, as the Patel Group, each to acquire a total of 43.06 percent of the voting shares of First Bankshares, Inc., Longwood, Florida, and thereby indirectly acquire First National Bank of Central Florida, Longwood, Florida.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Danny Biggs, Great Bend, Kansas; to acquire an additional 8.37 percent, for a total of 13 percent; Merlin & Nelva Grimes, Great Bend, Kansas, to acquire an additional 15.38 percent, for a total of 20 percent; ED&J, Inc., Great Bend, Kansas, to acquire an addtional 15.37 percent, for a total of 20 percent; Ronald & Carol Carr, Great Bend, Kansas, to acquire a total of 10 percent; Steven J. Sell, Great Bend, Kansas, to acquire a total of 10 percent; Richard Schenk, Great Bend, Kansas, to acquire a total of 10 percent; Dennis Call, Great Bend, Kansas, to acquire a total of 10 percent; and R. Joe Southard, Great Bend, Kansas, to acquire a total of 7 percent, of the voting shares of First Wakeeney Agency, Inc., Great Bend, Kansas, and thereby indirectly acquire Interstate Bank, Great Bend, Kansas.

Board of Governors of the Federal Reserve System, May 12, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–12838 Filed 5–15–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Thursday, May 22, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 2lst 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: May 14, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–13087 Filed 5–14–97; 3:31 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 97–06]

Family Violence Prevention and Services Program

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Notice of the availability of funding to States and Native American Tribes and Tribal organizations for family violence prevention and services.

SUMMARY: This multi-year announcement supersedes Program Announcement No. OCS 95–04, published January 11, 1995 in Volume 60, No.7, pages 2769–2780 of the **Federal Register**. This announcement governs the proposed award of formula grants under the Family Violence Prevention and Services Act to States (including Territories and Insular Areas) and Native American Tribes and Tribal organizations. The purpose of these grants is to assist States and Tribes in establishing, maintaining, and expanding programs and projects to prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents.

This announcement sets forth the application requirements, the application process, and other administrative and fiscal requirements for grants in fiscal years (FY) 1997 through FY 2000.

CLOSING DATES AND APPLICATIONS: Applications for FY 1997 family violence grant awards meeting the criteria specified in this announcement should be received no later than July 15, 1997. Grant applications for FY 1998 through FY 2000 should be received at the address specified below by December 15 of each subsequent fiscal year.

ADDRESSES: Applications should be sent to Office of Community Services, Administration for Children and Families, Attn: William D. Riley, 5th Floor, West Wing, 370 L'Enfant Promenade, SW., Washington, D.C. 20447.

FOR FURTHER INFORMATION CONTACT: William D. Riley (202) 401–5529, James Gray (202) 401–5705 or Trudy Hairston (202) 401–5319.

SUPPLEMENTARY INFORMATION:

Note: We Strongly Recommend That States and Native American Tribes and Tribal Organizations Keep a Copy of This **Federal Register** Notice for Future Reference. The Requirements Set Forth in This Announcement Will Apply to State and Native American Family Violence Program Grants for FY 1997 Through FY 2000. Information Regarding Any Changes in Available Funds, State/Tribal Allocations, and Administrative and Reporting Requirements Will Be Provided by Program Announcement in the **Federal Register** or by Program Instruction.

Part I. Reducing Family and Intimate Violence Through Coordinated Prevention and Services Strategies

A. The Importance of Coordination of Services

Family and intimate violence has serious and far reaching consequences for individuals, families and communities. A recent report from the National Research Council, ''Understanding Violence Against Women'' (1996) concludes that, ''Women are far more likely than men to be victimized by an intimate partner (Kilpatrick, et. al., 1992; Bachman, 1994; Bachman and Saltzman, 1995) * * * It is important to note that attacks by intimates are more dangerous to women than attacks by strangers: 52 percent of the women victimized by an intimate sustain injuries, compared with 20 percent of those victimized by a stranger (Bachman and Saltzman, 1995). Women are also significantly more likely to be killed by an intimate than are men. In 1993, 29 percent of female homicide victims were killed by their husbands, ex-husbands, or boyfriends; only 3 percent of male homicide victims were killed by their wives, ex-wives, or girlfriends (Federal Bureau of Investigation, 1993).''

The impacts of such family and intimate violence include physical injury and death of primary or secondary victims, psychological trauma, isolation from family and friends, harm to children witnessing or experiencing violence in homes in which the violence occurs, increased fear, reduced mobility and employability, homelessness, substance abuse, and a host of other health and related mental health consequences.

It is estimated that between 12 percent and 35 percent of women visiting emergency rooms with injuries are there because of battering (Randall, 1990; Abbot, *et. al.*, 1995). Estimates of the number of women who are homeless because of battering range from 27 percent (Knickman and Weitzman, 1989) to 41 percent (Bassuk and Rosenberg, 1988) to 63 percent of all homeless women (D'ercole and Struening, 1990). The significant correlation between domestic violence and child abuse (Edelson, 1995; Stark and Flitcraft, 1988; Strauss and Gelles, 1990), and the use of welfare by battered women as an ''economic escape route'' (Raphael, 1995) also suggest the need to coordinate domestic violence intervention activities with those addressing child abuse and welfare reform activities at the Federal, State and local levels.

When programs that seek to address these issues operate independently of each other, a fragmented, and consequently less effective, service delivery and prevention system may be the result. Coordination and collaboration among the police, prosecutors, the courts, victim services providers, child welfare and family preservation services, and medical and mental health service providers is needed to provide more responsive and effective services to victims of domestic violence and their families. It is essential that all interested parties are involved in the design and improvement of intervention and prevention activities.

To help bring about a more effective response to the problem of domestic violence, the Department of Health and Human Services (HHS) urges States and Native American Tribes receiving funds under this grant announcement to coordinate activities funded under this grant with other new and existing resources for the prevention of family and intimate violence and related issues.

B. On-Going Coordination Efforts

1. Federal Coordination

In the fall of 1993, a Federal Interdepartmental Work Group (including the Departments of Health and Human Services, Justice, Education, Housing and Urban Development, Labor, and Agriculture) began working together to study cross-cutting issues related to violence, and to make recommendations for action in areas such as youth development, schools,

juvenile justice, family violence, sexual assault, firearms, and the media. The recommendations formed a framework for ongoing policy development and coordination within and among the agencies involved.

Based on these initial coordination efforts, a new interdepartmental strategy was developed for implementing the programs and activities enacted in the Violent Crime Control and Law Enforcement Act of 1994 (Crime Bill). A Steering Committee on Violence Against Women is currently coordinating activities among family violence-related programs and across agencies and departments. Also, in 1996, the Departments of Justice and Health and Human Services announced the formation of a National Advisory Council on Violence Against Women to help coordinate efforts, assist victims, and advise the Federal Government on implementation of the Violence Against Women Act (VAWA).

2. Opportunities for Coordination at the State and Local Level

The major domestic violence intervention and prevention activities funded by the Federal government focus on law enforcement and justice system strategies; victim protection and assistance services; and prevention activities, including public awareness and education. Federal programs also serve related needs, such as housing, family preservation and child welfare services, substance abuse treatment, and job training.

We want to call to your attention two major programs, enacted by Congress in the past few years, that provide new funds to expand services and which require the on-going involvement of State agencies, Indian tribes, State Domestic Violence Coalitions, and others interested in prevention and services for victims of domestic violence. These programs are: Law Enforcement and Prosecution Grants to Reduce Violent Crimes Against Women, administered by the Department of Justice, (also known as the STOP grants), and the Family Preservation and Support Services program, administered by DHHS. Both programs (described below) require the State agencies and Indian tribes administering these programs to conduct an inclusive, broad-based, comprehensive planning process at the State and community level.

In addition, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Welfare Reform law, offers an opportunity for those organizations providing domestic violence intervention and prevention services to work with State welfare agencies in providing safety planning and services to welfare recipients who may be battered. We believe the expertise and perspective of the family violence prevention and services field will be invaluable as decisions are made on how best to use these funds and design service delivery improvements.

(a) Law Enforcement and Prosecution Grants To Reduce violence Crimes Against Women

Enacted as part of the Violence Against Women Act (VAWA), this law provides an opportunity to respond to violence against women in a comprehensive manner. It emphasizes the development of Federal, State and local partnerships to assure that offenders are prosecuted to the fullest extent of the law, that crime victims receive the services they need and the dignity they deserve, and that all parts of the criminal justice system have training and funds to respond effectively to both offenders and crime victims.

The Office of Justice Programs (OJP) in the Department of Justice (DOJ) implemented a new formula grant program, known informally as the Stop Violence Against Women Formula Grants (Services, Training, Officers, prosecution) which made available $26 million to States in FY 1995, $130 million to States in FY 1996, and $145 million to States in FY 1997.

States must allocate at least 25 percent of their funds to law enforcement activities, at least 25 percent to prosecution activities, and at least 25 percent to nonprofit nongovernmental victims services, including underserved populations. These grant funds are to help develop, strengthen, and implement effective law enforcement, prosecution, and victim assistance strategies. Eligibility for this program is limited to the States, Territories and the District of Columbia.

The Violence Against Women Act stipulates that four percent of the funds appropriated each year for the STOP program will be awarded to Indian tribal governments. The OJP grant regulations and program guidelines will address the requirements of both the formula grant and the Indian grant programs.

In order to be eligible for DOJ funds, States must develop a plan for implementation. As a part of the planning process, the Violence Against Women Act requires that States must consult with nonprofit, nongovernmental victims' services programs including sexual assault and domestic violence victim services programs. Such a coordinated approach will also require a partnership and collaboration among the police, prosecutors, the courts, shelter and victims service providers, and medical and mental health professionals. OJP expects that States will draw into the planning process the experience of existing domestic violence task forces and coordinating councils such as the State Agencies and the State Domestic Violence Coalitions, as well as representatives from key components of the criminal justice system and other professionals who interact with women who are victims of violence.

(b) Family Preservation and Family Support Services Program

In August 1993, Congress created a new program entitled ''Family Preservation and Support Services'' (Title IV–B of the Social Security Act). Funds under this program are awarded to State Child Welfare agencies to provide needed services and to help bring about better coordination among child and family services programs at the state and local level. Many jurisdictions are including domestic violence programs and advocacy organizations in their on-going planning and services system to better address the needs of victims of family violence and their dependents.

Family preservation services include intensive services assisting families at-risk or in crisis, particularly in cases where children are at risk of being placed out of the home. Victims of family violence and their dependents are considered at-risk or in crisis.

Family support services include community-based preventive activities designed to strengthen parents' ability to create safe, stable, and nurturing home environments that promote healthy child development. These services also include assistance to parents themselves through home visiting and activities such as drop-in center programs and parent support groups.

(c) The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform)

On August 22, 1996, Public Law 104–193 was enacted which abolished Aid to Families with Dependent Children (AFDC) and other related programs. Under this new law, the authority and responsibility to determine which families will receive assistance (cash and/or services) and how much under the new Temporary Assistance to Needy Families (TANF) Block Grant, (which replaces AFDC) has been shifted from the Federal government to the States; States will also decide which programs

will exist within their States to serve eligible families.

Under this new law, each State must submit a State plan to the Department of Health and Human Services in order to receive TANF block grant funds. The plan must certify that local government and private sector organizations have been consulted about the plan and have had at least 45 days in which to comment. There are two areas of the Act which specifically refer to domestic violence: (1) States are allowed to exempt 20 percent of their caseload from the 60-month limit on receiving welfare benefits for ''reason of hardship or if the family includes an individual who has been battered or subjected to extreme cruelty'' (Section 408(a)(7)(C)(i)); and (2) the Family Violence Amendment, (also known as the Wellstone/Murray Family Violence provision), where States have the option to include a certification about victims of domestic violence in their State plans which allows States to waive certain requirements for certain domestic violence victims (Section 402(a)(7)).

(d) The Role and Activities of State Domestic Violence Coalitions in Coordination

State Domestic Violence Coalitions have an important role in ensuring that these and other Federal and State initiatives are informed by and coordinated with related intervention and prevention efforts. It remains important that State coalition efforts to improve the judicial, social services, and health systems response to domestic violence continue to expand and are coordinated with State agency initiatives in these areas.

In 1966, the National Center for Injury Prevention and Control of the Centers for Disease Control and Prevention (CDC) initiated a project to compile an inventory of funding sources for domestic violence and sexual assault coalitions and community-based programs. This included a survey of coalitions and programs to identify the types of funding received and the activities this funding supported. The survey used the following categories to capture the range of activities of many State domestic violence coalitions:

Services Advocacy includes work to support the growth and development of community-based domestic violence programs, including the provision of training and technical assistance to those providing direct services (e.g., providing training and technical assistance to hotline /shelter workers and legal advocates, developing program standards for domestic violence programs).

Systems Advocacy is work to effect policy and procedural change in order to improve the institutional response to domestic violence (e.g., developing protocols for medical or mental health providers, training for those who work in the criminal and civil justice, welfare ,child protective services, legal services, and educational systems. The development of coordinated community interventions, public policy advocacy directed at changing State/local laws, policies, practices related to domestic violence, and the development and implementation of statewide standards for batterers intervention programs).

Statewide Planning includes needs assessment and planning activities designed to document gaps in current response and prevention efforts and to guide future activities.

Public Awareness/Community Education includes work designed to inform and mobilize the general public around domestic violence issues (e.g., education programs in elementary, middle and high schools and expanded outreach to underserved populations).

Administration includes activities directed at supporting organizational functioning, such as fiscal and programmatic record keeping and reporting, state-wide management of programs, and fundraising.

Direct Services are those provided directly to victims of domestic violence or to their families, friends, or supporters by a State coalition (e.g., State-wide hotline, information and referral, legal advocacy services, etc.).

The above categories are included as an overview of the role that State coalitions may play in domestic violence intervention and prevention and the types of collaborative activities the Family Violence Prevention and Service Act are meant to support.

Part II. Programmatic and Funding Information

A. Background

Title III of the Child Abuse Amendments of 1984 (Public Law 98–457, 42 U.S.C. 10401 *et seq.*) is entitled the ''Family Violence Prevention and Services Act'' (the Act). The Act was first implemented in FY 1986, reauthorized and amended in 1992 by Public Law 102–295, in 1994 by Public Law 103–322, the Violent Crime Control and Law Enforcement Act, and in 1996 by Pub. L. 104–235, the Child Abuse Prevention and Treatment Act (CAPTA) of 1996.

The purpose of this legislation is to assist States and Native American Tribes and Tribal organizations in supporting the establishment, maintenance, and expansion of programs and projects to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents.

During FY 1996, 220 grants were made to States and Native American Tribes. The Department also made 52 family violence prevention grant awards to nonprofit State domestic violence coalitions.

In addition, the Department supports the National Resource Center for Domestic Violence (NRC) and three Special Issue Resource Centers (SIRCs). The SIRCs are the Battered Women's Justice Project; the Resource Center on Child Custody and Protection, and the Health Resource Center on Domestic Violence. The purpose of the NRC and the SIRCs is to provide resource information, training, and technical assistance to Federal, State, and Native American agencies, local domestic violence prevention programs, and other professionals who provide services to victims of domestic violence.

To carry out a new provision of the Crime Bill, the President announced in February, 1996, the Department's funding of a national domestic violence hotline to ensure that every woman has access to information and emergency assistance wherever and whenever she needs it. The national domestic violence hotline is a 24-hour, toll-free service which provides crisis assistance, counseling, and local shelter referrals to women across the country. Hotline counselors also are available for non-English speaking persons and for people who are hearing impaired. The hotline number is 1–800–799–SAFE; the TDD number for the hearing impaired is 1–800–787–3224

B. Funds Available

Congress appropriated $62,000,000 for FY 1997 to carry out the Family Violence Prevention and Services program. In addition, through the Violence Crime Reduction Trust Fund, $10,800,000 was authorized for the Grants to Battered Women's Shelter program and $1,200,000 for the National Domestic Violence Hotline. The grant award for the National Domestic Violence Hotline is made in a separate announcement.

Of the total appropriated in section 310(a) for fiscal year 1997, we will allocate 70 percent of the total ($72,800,000) to the designated State agencies administering family violence prevention and services programs; 10 percent to the Tribes and Tribal organizations for the establishment and operation of shelters, safe houses, and

the provision of related services; and 10 percent to the State Domestic Violence Coalitions to continue their work within the domestic violence community by proving technical assistance and training, and advocacy services among other activities with local domestic violence programs and to encourage appropriate responses to domestic violence within the States.

We also will make 5 percent of the $72,800,000 available to continue the support for the National Resource Center and the three Special Issue Resource Centers. The remaining 5 percent of the FY 1997 family violence prevention and services funding will be used to support training and technical assistance, collaborative projects with advocacy organizations and service providers, data collection efforts, public education activities, research and other demonstration activities.

C. State Allocation

The Secretary is required to make available not less than 70 percent of amounts appropriated under Section 310(a) for grants to States and not less than 10% of amounts appropriated under Section 310(a) for grants to Native American Tribes and Tribal organizations.

Family Violence grants to the States, the District of Columbia, and the Commonwealth of Puerto Rico are based on population. Each grant shall be not less than 1% of the amounts appropriated for grants under section 303(a) or $400,000, whichever is the lesser amount. The CAPTA reauthorization raised the minimum grant to States from $200,000 to $400,000. State allocations are listed as Appendix A at the end of this announcement and have been computed based on the formula in section 304 of the Act.

For the purpose of computing allotments, the statute provides that Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Republic of Palau will each receive grants of not less than one-eighth of 1% of the amounts appropriated. However, on October 1, 1994, Palau became independent and a Compact of Free Association between the United States and Palau came into effect. This change in the political status of Palau has the following effect on Palau's allocation:

In FY 95, Palau was entitled to 100% of its allocation. Beginning in FY 96, its share was to be reduced as follows:

FY 96—not to exceed 75% of the total amount appropriated for such programs in FY 95;

FY 97—not to exceed 50% of the total amount appropriated for such programs in FY 95;

FY 98—not to exceed 25% of the total amount appropriated for such programs in FY 95.

D. Native American Tribal Allocations

Of the $72,800,000 appropriated for FY 1997, $7,280,000 is authorized for grants to Native American Tribes. Native American Tribes and Tribal organizations are eligible for funding under this program if they meet the definition of such entities as found in subsections (b) and (c), respectively, of section 4 of the Indian Self-Determination and Education Assistance Act and are able to demonstrate their capacity to carry out a family violence prevention and services program.

A list of currently eligible Native American Tribes is found at Appendix B of this Announcement. Any Native American Tribe that believes it meets the eligibility criteria and should be included in the list of eligible tribes should provide supportive documentation in its application and a request for inclusion. (See Native American Tribal Application Requirements in Part V.)

In computing Native American Tribal allocations, we will use the latest available population figures from the Census Bureau. Where Census Bureau data are unavailable, we will use figures from the BIA Indian Population and Labor Force Report. If not all eligible Tribes apply, the available funds will be divided proportionally among the Tribes which do apply and meet the requirements.

Because section 304 of the Act specifies a minimum base amount for State allocations, we have set a base amount for Native American Tribal allocations. Since FY 1986, we have found, in practice, that the establishment of a base amount has facilitated our efforts to make a fair and equitable distribution of limited grant funds.

Due to the expanded interest in the prevention of family violence and in the provision of services to victims of family violence and their dependents, we have received an increasing number of tribal applications over the past several years. In order to ensure the continuance of an equitable distribution of family violence prevention and services funding in response to the increased number of tribes that apply, we have changed the funding formula for the allocation of family violence funds.

In addition to the consideration of the applicant tribe being over or under a 3,000 member residential census we now consider the ratio of the tribe's population to the total population of all the tribes that have applied for these funds.

Native American Tribes which meet the application requirements and whose reservation and surrounding Tribal Trust Lands population is:

- Less than 1,500 will receive a minimum base amount of $1,500;
- Greater than 1,500 but less than 3,001 will receive a minimum base amount of $3,000;
- Between 3,001 and 4,000 will receive a minimum base amount of $4,000; and
- Between 4,001 and 5,000 will receive a minimum base amount of $5,000.

The minimum base amounts are in relation to the Tribe's population and the progression of an additional $1,000 per 1,000 persons in the population range continues until the Tribe's population is 50,000.

Tribes with a population of 50,000 to 100,000 will receive a minimum of $50,000, and Tribes with a population of 100,001 to 150,000 will receive a minimum of $100,000.

Once the base amounts have been distributed to the Tribes that have applied for family violence funding, the ratio of the Tribe's population to the total population of all the applicant Tribes is then considered in allocating the remainder of the funds. With the distribution of a proportional amount plus a base amount to the Tribes we have accounted for the variance in actual population and scope of the family violence programs. Under the previous allocation plan we did not have a method by which to consider the variance in tribal census counts. As in previous years, Tribes are encouraged to apply as consortia for the family violence funding.

Part III. General Grant Requirements Applicable to States and Native American Tribes

A. Definitions

States and Native American Tribes should use the following definitions in carrying out their programs. The definitions are found in section 309 of the Act.

(1) Family Violence: Any act or threatened act of violence, including any forceful detention of an individual, which (a) results or threatens to result in physical injury and (b) is committed by a person against another individual (including an elderly person) to whom

such person is or was related by blood or marriage or otherwise legally related or with whom such person is or was lawfully residing.

(2) Shelter: The provision of temporary refuge and related assistance in compliance with applicable State law and regulation governing the provision, on a regular basis, which includes shelter, safe homes, meals, and related assistance to victims of family violence and their dependents.

(3) Related assistance: The provision of direct assistance to victims of family violence and their dependents for the purpose of preventing further violence, helping such victims to gain access to civil and criminal courts and other community services, facilitating the efforts of such victims to make decisions concerning their lives in the interest of safety, and assisting such victims in healing from the effects of the violence. Related assistance includes:

(a) Prevention services such as outreach and prevention services for victims and their children, employment training, parenting and other educational services for victims and their children, preventive health services within domestic violence programs (including nutrition, disease prevention, exercise, and prevention of substance abuse), domestic violence prevention programs for school age children, family violence public awareness campaigns, and violence prevention counseling services to abusers;

(b) Counseling with respect to family violence, counseling or other supportive services by peers individually or in groups, and referral to community social services;

(c) Transportation, technical assistance with respect to obtaining financial assistance under Federal and State programs, and referrals for appropriate health-care services (including alcohol and drug abuse treatment), but does not include reimbursement for any health-care services;

(d) Legal advocacy to provide victims with information and assistance through the civil and criminal courts, and legal assistance; or

(e) Children's counseling and support services, and child care services for children who are victims of family violence or the dependents of such victims.

B. Expenditure Periods

The family violence prevention funds under the Act may be used for expenditures on and after October 1 of each fiscal year for which they are granted, and will be available for expenditure through September 30 of the following fiscal year, i.e., FY 1997 funds may be used for expenditures from October 1, 1996 through September 30, 1998.

Reallotted funds, if any, are available for expenditure until the end of the fiscal year following the fiscal year that the funds became available for reallotment. FY 1997 grant funds which are made available to the States through reallotment, under section 304(d)(1), must be expended by the State no later than September 30, 1998.

C. Reporting Requirements: New State Performance Report

The Crime Bill amended the Act to add new reporting requirements for States in section 303(a)(4). This section requires that States file a performance report with the Department describing the activities carried out, and including an assessment of the effectiveness of those activities in achieving the purposes of the grant. A section of this performance report must be completed by each grantee or subgrantee that performed the direct services contemplated in the State's application certifying performance of such services.

The Performance Report may include examples of success stories about the services which were provided and the positive impact on the lives of children and families and should include the following information: an explanation of the activities carried out, including and assessment of the major activities supported by the family violence funds, what specific priorities within the State, Tribe, or Tribal organization were assessed, and what special emphases were placed on these activities; e.g., including under-served populations and a description of the specific services and facilities that your agency funded, contracted with, or otherwise used in the implementation of your program (e.g., shelters, safehouse, related assistance, programs for batterers).

Performance reports are due on an annual basis at the end of the calendar year (December 29).

The statute also requires the Department to suspend funding for an approved application if any applicant fails to submit an annual performance report or if the funds are expended for purposes other than those set forth under this announcement.

D. Reporting Requirements; Departmental Grants Management Reports

All State and Native American Tribal grantees are reminded that the annual Program Reports and annual Financial Status Reports (Standard Form 269) are due 90 days after the end of each Federal fiscal year, i.e., reports are due on December 29 of each year.

E. Required Certifications

All applications must submit or comply with the required certifications found at Appendix C as follows:

- *Anti-Lobbying Certification and Disclosure Form must be signed and submitted with the application:* If applicable, a standard Form LLL, which discloses lobbying payments must be submitted.
- *Certification Regarding Drug-Free Workplace Requirements and the Certification Regarding Debarment:* The signature on the application by the chief program official attests to the applicants intent to comply with the Drug-Free Workplace requirements and compliance with the Debarment Certification. The Drug-Free Workplace and Debarment certification do not have to be returned with the application.
- *Certification Regarding Environmental Tobacco Smoke:* The signature on the application by the chief program official attests to the applicants intent to comply with the requirements of the Pro-Children Act of 1994 (Act). The applicant further agrees that it will require the language of this certification be included in any sub-awards which contain provisions for children's services and that all grantees shall certify accordingly.

Part IV. Application Requirements for States

A. Eligibility: States

''States'' as defined in section 309(6) of the Act are eligible to apply for funds. The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the remaining eligible entity previously a part of the Trust Territory of the Pacific Islands—the Republic of Palau.

In the past, Guam, the Virgin Islands and the Commonwealth of the Northern Mariana Islands have applied for funds as a part of their consolidated grant under the Social Services Block grant (the Republic of Palau has applied for funds through the Community Services Block Grant). These jurisdictions need not submit an application under this Program Announcement if they choose to have their allotment included as part of a consolidated grant application.

B. Approval/Disapproval of a State's Application

The Secretary will approve any application that meets the requirements

of the Act and this announcement and will not disapprove any such application except after reasonable notice of the Secretary's intention to disapprove has been provided to the applicant and after a 6-month period providing an opportunity for applicant to correct any deficiencies.

The notice of intention to disapprove will be provided to the applicant within 45 days of the date of the application.

C. Content of the State Application

The State's application must be signed by the Chief Executive of the State or the Chief Program Official designated as responsible for the administration of the Act.

All applications must contain the following information or documents:

(1) The name of the State agency, the name of the Chief Program Official designated as responsible for the administration of funds under this Act, and the name of a contact person if different from the Chief Program Official (section 303(a)(2)(D)).

(2) A plan describing in detail how the needs of underserved populations will be met, including populations underserved because of ethnic, racial, cultural, language diversity or geographic isolation (section 303(a)(2)(c)).

(a) Identify the underserved populations that are being targeted for outreach and services.

(b) In meeting the needs of the underserved population, describe the domestic violence training that will be provided to the individuals who will do the outreach and intervention to these populations. Describe the specific service environment, e.g., new shelters, services for the battered elderly, women of color etc.

(c) Describe the public information component of the State's outreach program; describe the elements of your program that are used to explain domestic violence, the most effective and safe ways to seek help, identify available resources, etc.

(3) Provide a complete description of the process and procedures used to involve State domestic violence coalitions and other knowledgeable individuals and interested organization to assure an equitable distribution of grants and grant funds within the State and between rural and urban areas in the State (sections 303(a)(2)(C) and 311(a)(5)).

(4) Provide a complete description of the process and procedures implemented that allow for the participation of the State domestic violence coalition in planning and monitoring the distribution of grant funds and determining whether a grantee is in compliance with sections 303(a)(2)(A), 303(a)(3) and 311(a)(5).

(5) Provide a copy of the procedures developed and implemented that assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services by any program assisted under the Act (section 303(a)(2)(E)).

(6) Include a description of how the State plans to use the grant funds, a description of the target population, and the expected results from the use of the grant funds (section 303(a)(4)).

(7) Provide a copy of the law or procedures that the State has implemented for the eviction of an abusive spouse from a shared household (section 303(a)(2)(F)).

All applications must contain the following assurances:

(a) That grant funds under the Act will be distributed to local public agencies and nonprofit private organizations (including religious and charitable organizations and voluntary associations) for programs and projects within the State to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents in order to prevent future violent incidents (section 303(a)(2)(A)).

(b) That not less than 70 percent of the funds distributed shall be used for immediate shelter and related assistance to the victims of family violence and their dependents and not less than 25 percent of the funds distributed shall be used to provide related assistance (section 303(f)).

(c) That not more than 5 percent of the funds will be used for State administrative costs (section 303(a)(2)(B)(i)).

(d) That in distributing the funds, the States will give special emphasis to the support of community-based projects of demonstrated effectiveness carried out by non-profit private organizations, particularly those projects the primary purpose of which is to operate shelters for victims of family violence and their dependents and those which provide counseling, advocacy, and self-help services to victims and their children (section 303(a)(2)(B)(ii)).

(e) That grants funded by the States will meet the matching requirements in section 303(e), i.e., not less than 20 percent of the total funds provided for a project under this title with respect to an existing program, and with respect to an entity intending to operate a new program under this title, not less than 35 percent. The local share will be cash or in kind; and the local share will not include any Federal funds provided under any authority other than this Title (section 303(e)). (This is a new provision added in the 1996 CAPTA reauthorization.)

(f) That grant funds made available under this program by the State will not be used as direct payment to any victim or dependent of a victim of family violence (section 303(c)).

(g) That no income eligibility standard will be imposed on individuals receiving assistance or services supported with funds appropriated to carry out the Act (section 303(d)).

(h) That the address or location of any shelter-facility assisted under the Act will not be made public, except with the written authorization of the person or persons responsible for the operation of such shelter (section 303(a)(2)(E)).

(i) That all grants made by the State under the Act will prohibit discrimination on the basis of age, handicap, sex, race, color, national origin or religion (section 307).

(j) That funds made available under the FVPSA be used to supplement and not supplant other Federal, State, and local public funds expended to provide services and activities that promote the purposes of the FVPSA.

(k) That States will comply with the applicable Departmental recordkeeping and reporting requirements and general requirements for the administration of grants under 45 CFR Parts 74 and 92.

Part V. Application Requirements for Native American Tribes and Tribal Organizations

A. Eligibility: Native American Tribes and Tribal Organizations

As described above, Native American Tribes and Tribal organizations are eligible for funding under this program if they meet the definition of such entities as found in subsections (b) and (c) of section 4 of the Indian Self-Determination and Education Assistance Act and are able to demonstrate their capacity to carry out a family violence prevention and services program.

A list of currently eligible Native American Tribes and Tribal organizations is found at Appendix B of this Announcement. Any Native American Tribe or Tribal organization that believes it meets the eligibility criteria and should be included in the list of eligible tribes should provide supportive documentation and a request for inclusion in its application. (See Application Content Requirements below.)

As in previous years, Native American Tribes may apply singularly or as a consortium. In addition, a non-

profit private organization, approved by a Native American Tribe for the operation of a family violence shelter on a reservation is eligible for funding.

B. Approval/Disapproval of a Native American Tribes Application

The Secretary will approve any application that meets the requirements of the Act and this Announcement, and will not disapprove an application unless the Native American Tribe or Tribal organization has been given reasonable notice of the Department's intention to disapprove and an opportunity to correct any deficiencies (section 303(B)(2)).

C. Native American Tribe/Tribal Organization Application Content Requirements

The application from the Native American Tribe, Tribal organization, or nonprofit private organization approved by an eligible Native American Tribe, must be signed by the Chief Executive Officer of the Native American Tribe or Tribal organization.

All applications must contain the following information/documents:

(1) The name of the organization or agency and the Chief Program Official designated as responsible for administering funds under the Act, and the name, telephone number, and fax number, if available, of a contact person in the designated organization or agency.

(2) A copy of a current resolution stating that the designated organization or agency has the authority to submit an application on behalf of the Native American individuals in the Tribe(s) and to administer programs and activities funded under this program (section 303(b)(2)).

(3) A description of the procedures designed to involve knowledgeable individuals and interested organizations in providing services under the Act (section 303(b)(2)). For example, knowledgeable individuals and interested organizations may include: Tribal officials or social services staff involved in child abuse or family violence prevention, Tribal law enforcement officials, representatives of State coalitions against domestic violence, and operators of family violence shelters and service programs.

(4) A description of the Tribe's operation of and/or capacity to carry out a family violence prevention and services program. This might be demonstrated in ways such as the following:

(a) The current operation of a shelter, safehouse, or family violence prevention program;

(b) The establishment of joint or collaborative service agreements with a local public agency or a private non-profit agency for the operation of family violence prevention activities or services; or

(c) The operation of social services programs as evidenced by receipt of ''638'' contracts with the Bureau of Indian Affairs (BIA); Title II Indian Child Welfare grants from the BIA; Child Welfare Services grants under Title IV–B of the Social Security Act; or Family Preservation and Family Support grants under title IV–B of the Social Security Act.

(5) A description of the services to be provided, how the Native American Tribe or Tribal organization plans to use the grant funds to provide the direct services, to whom the services will be provided, and the expected results of the services.

(6) Documentation of the procedures that assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services by any program assisted under the Act (section 303(a)(2)(E)).

(7) The EIN number of the Native American tribe, Tribal organization, or non-profit organization submitting the application.

Each application must contain the following assurances:

(a) That not less than 70 percent of the funds shall be used for immediate shelter and related assistance for victims of family violence and their dependents and not less than 25% of the funds distributed shall be used to provide related assistance (section 303(f)).

(b) That grant funds made available under the Act will not be used as direct payment to any victim or dependent of a victim of family violence (section 303(c)).

(c) That the address or location of any shelter or facility assisted under the Act will not be made public, except with the written authorization of the person or persons responsible for the operations of such shelter (section 303(a)(2)(E)).

(d) That law or procedure has been implemented for the eviction of an abusing spouse from a shared household (section 303(a)(2)(F)).

Part VI. Other Information

A. Notification Under Executive Order 12372

For States, this program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' for State plan consolidation and implication only—45 CFR 100.12. The review and comment provisions of the Executive Order and Part 100 do not apply. Federally-recognized Native American Tribes are exempt from all provisions and requirements of E.O. 12372.

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the application requirements contained in this notice have been approved by the Office of Management and Budget under control number 0970–0062.

C. Certifications

Applications must comply with the required certifications found at Appendix C as follows:

Anti-Lobbying Certification and Disclosure Form. Pursuant to 45 CFR Part 93, the certification must be signed and submitted with the application. If applicable, a standard form LLL, which discloses lobbying payments must be submitted.

Certification Regarding Drug-Free Workplace Requirements and the Certification Regarding Debarment: The signature on the application by the chief program official attests to the applicants intent to comply with the Drug-Free Workplace requirements and compliance with the Debarment Certification. The Drug-Free Workplace and Debarment certifications do not have to be returned with the application.

Certification Regarding Environmental Tobacco Smoke: The signature on the application by the chief program official attests to the applicants intent to comply with the requirements of the Pro-Children Act of 1994. The applicant further agrees that it will require the language of this certification be included in any sub-awards which contain provisions for children's services and that all grantees shall certify accordingly.

(Catalog of Federal Domestic Assistance number 93.671, Family Violence Prevention and Services)

Dated: May 8, 1997.

Donald Sykes,

Director, Office of Community Services.

BILLING CODE 4184–01–P

Appendix A

FY 97 FVPS ALLOTMENTS			2/3/97
STATES	CAN 4707	CAN 5568	TOTAL
ALABAMA	620,747	132,752	753,499
ALASKA	400,000	-	400,000
AMERICAN SAMOA	54,250	9,450	63,700
ARIZONA	615,639	131,659	747,298
ARKANSAS	400,000	40,087	440,087
CALIFORNIA	4,610,590	986,012	5,596,602
COLORADO	546,894	116,957	663,851
CONNECTICUT	478,003	102,225	580,228
DELAWARE	400,000	-	400,000
DIST. OF COLUMBIA	400,000	-	400,000
FLORIDA	2,067,601	442,173	2,509,774
GEORGIA	1,051,023	224,770	1,275,793
GUAM	54,250	9,450	63,700
HAWAII	400,000	-	400,000
IDAHO	400,000	-	400,000
ILLINOIS	1,726,650	369,257	2,095,907
INDIANA	846,978	181,132	1,028,110
IOWA	414,804	88,709	503,513
KANSAS	400,000	54,438	454,438
KENTUCKY	563,387	120,484	683,871
LOUISIANA	633,737	135,530	769,267
MAINE	400,000	-	400,000
MARYLAND	736,052	157,410	893,462
MASSACHUSETTS	886,531	189,592	1,076,123
MICHIGAN	1,393,726	298,059	1,691,785
MINNESOTA	672,853	143,895	816,748
MISSISSIPPI	400,000	77,824	477,824
MISSOURI	777,065	166,182	943,247
MONTANA	400,000	-	400,000
NEBRASKA	400,000	-	400,000
NEVADA	400,000	-	400,000
NEW HAMPSHIRE	400,000	-	400,000
NEW JERSEY	1,159,614	247,992	1,407,606
NEW MEXICO	400,000	-	400,000
NEW YORK	2,647,043	566,091	3,213,134
NORTH CAROLINA	1,050,147	224,582	1,274,729
NORTH DAKOTA	400,000	-	400,000
N. MARIANA ISLANDS	54,250	9,450	63,700
OHIO	1,627,546	348,064	1,975,610
OKLAHOMA	478,441	102,318	580,759
OREGON	458,445	98,042	556,487
PALAU	15,074	-	15,074
PENNSYLVANIA	1,761,971	376,811	2,138,782
PUERTO RICO	400,000	-	400,000
RHODE ISLAND	400,000	-	400,000
SOUTH CAROLINA	536,093	114,648	650,741
SOUTH DAKOTA	400,000	-	400,000
TENNESSEE	767,140	164,059	931,199
TEXAS	2,732,865	584,444	3,317,309
UTAH	400,000	-	400,000
VERMONT	400,000	-	400,000
VIRGIN ISLANDS	54,250	9,450	63,700
VIRGINIA	965,931	206,572	1,172,503
WASHINGTON	792,682	169,522	962,204
WEST VIRGINIA	400,000	-	400,000
WISCONSIN	747,728	159,908	907,636
WYOMING	400,000	-	400,000
		-	
TOTAL	43,400,000	7,560,000	50,960,000

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APPENDIX B

State	Tribe name
AK ...	Chevak Native Village
AK ...	Lime Village
AK ...	Village of Aniak
AK ...	Anvic Village
AK ...	Village of Artic Village
AK ...	Native Village of Atka
AK ...	Levelock Village
AK ...	Village of Atmautluak
AK ...	Atqasuk Village
AK ...	New Stuyahok Village
AK ...	Village of Chefomak
AK ...	Village of Anaktuvuk Pass
AK ...	Chickaloon Native Village
AK ...	Native Village of Chignik
AK ...	Native Village of Larsen Bay
AK ...	Native Village of Chignik
AK ...	Chignik Lake Village
AK ...	Chilkat Indian Village
AK ...	Chilkoot Indian Association
AK ...	Native Village of Kwinhagak
AK ...	Native Village of Chenega (IRA)
AK ...	Native Village of Mekoryuk
AK ...	Nenana Native Association
AK ...	Native Village of Nelson Lagoon
AK ...	Native Village of Napaskiak
AK ...	Native Village of Napaimute
AK ...	Native Village of Napakiak (IRA)
AK ...	Native Village of Nanwalek
AK ...	Naknek Native Village
AK ...	Asa' Carsarmuit Tribe of Mt.
AK ...	Angoon Community
AK ...	Mentasta Lake Village
AK ...	Yupiit of Andreafski
AK ...	McGrath Native Village
AK ...	Native Village of Mary's Igloo
AK ...	Native Village of Marshall (aka)
AK ...	Manokotak Village
AK ...	Manley Hot Springs Village
AK ...	Village of Lower Kalskag
AK ...	Native Village of Ambler
AK ...	Metlakatla Indian Community
AK ...	Koyukuk Native Village
AK ...	Native Village of Mento (IRA)
AK ...	Native Village of Kipnuk
AK ...	Native Village of Kwigillingok (IRA)
AK ...	Healy Lake Village
AK ...	Knit Tribe
AK ...	Holy Cross Village
AK ...	Hoonah Indian Association
AK ...	Native Village of Hooper Bay
AK ...	Hughes Village
AK ...	Native Village of Kluti-Kaah
AK ...	Native Village of Kobuk
AK ...	Native Village of Kivalina (IRA)
AK ...	Kokhanok Village
AK ...	Huslia Village
AK ...	King Island Native Community (IRA)
AK ...	Agdaagux Tribe of King Cove
AK ...	Native Village of Kiana
AK ...	Native Village of Karluk (IRA)
AK ...	Organized Village of Kasaan
AK ...	Native Village of Kasiglik
AK ...	Kenaitze Indian Tribe (IRA)
AK ...	Ketchikan Indian Corporation
AK ...	Klawock Cooperative
AK ...	Native Village of Eek
AK ...	Newtok Village
AK ...	Chinik Eskimo Community (aka)
AK ...	Native Village of Koyuk (IRA)
AK ...	Native Village of Dilligham
AK ...	Native Village of Diomede
AK ...	Village of Dot Lake
AK ...	Douglas Indian Association
AK ...	Native Village of Eagle
AK ...	Noorvik Native Community
AK ...	Village of Hotlik
AK ...	Organized Village of Kwethluk (IRA)
AK ...	Egegik Village
AK ...	Eklutna Native Village
AK ...	Native Village of Ekuk
AK ...	Ekwok Village
AK ...	Native Village of Goodnews
AK ...	Organized Village of Grayling
AK ...	Gulkana Village
AK ...	Native Village of Kongiganak
AK ...	Koliganet Village
AK ...	Native Village of Kotzebue
AK ...	Seldovia Village Tribe
AK ...	Rampart Village
AK ...	Village of Red Devil
AK ...	Native Village of Ruby
AK ...	Iqurmuit Tribe (Russian
AK ...	Village of Salamatof
AK ...	Qagun Tayagungin Tribe of
AK ...	Native Village of Savoonga (IRA)
AK ...	Organized Village of Saxman
AK ...	Native Village of Solomon
AK ...	Native Village of Selawik (IRA)
AK ...	Native Village of Port Heiden
AK ...	Shageluk Native Village (IRA)
AK ...	Native Village of Shaktoolik
AK ...	Native Village of Sheldon's
AK ...	Native Village of Shishmaref
AK ...	Shoonaq' Tribe of Kodiak
AK ...	Native Village of Shungnak
AK ...	Sitka Tribe of Alaska (IRA)
AK ...	Skaguay Traditional Council
AK ...	Newhalen Village
AK ...	Native Village of Scammon Bay
AK ...	Petersburg Indian Association
AK ...	Northway Village
AK ...	Native Village of Nuiqsut
AK ...	Nulato Village
AK ...	Native Village of Nunapitchuk
AK ...	Native Village of Ohogamiut
AK ...	Village of Old Harbor
AK ...	Orutsararmuit Native Council,
AK ...	Oscarville Traditional Council
AK ...	Native Village of Ouzinkie
AK ...	Portage Creek Village
AK ...	Native Village of Perryville (IRA)
AK ...	Native Village of Port Lions
AK ...	Native Village of Piamiut
AK ...	Native Village of Pilot Point
AK ...	Pilot Station Traditional Council
AK ...	Native Village of Pitka's Point
AK ...	Platinum Traditional Village
AK ...	Native Village of Point Hope
AK ...	Native Village of Point Lay
AK ...	Port Graham Village
AK ...	South Naknek Village
AK ...	Pedro Bay Village
AK ...	Native Village of Paimiut
AK ...	Village of Sleetmute
AK ...	Native Village of Unalakleet
AK ...	Native Village of Unga
AK ...	Qawalangin Tribe of Unalaska,
AK ...	Village of Wainwright
AK ...	Native Village of Wales (IRA)
AK ...	Native Village of White
AK ...	Wrangell Cooperative
AK ...	Ugashik Village
AK ...	Village of Ohogamiut
AK ...	Native Village of Tyonek (IRA)
AK ...	Qagan Tayagungin Tribe
AK ...	Nondalton Village
AK ...	Nome Eskimo Community (IRA)
AK ...	Native Village of NoatAK (IRA)
AK ...	Ninilchik Village Traditional
AK ...	Native Village of Nikolski (IRA)
AK ...	Nikolai Village
AK ...	Native Village of Nightmute
AK ...	Yakutat Tlingit Tribe
AK ...	Native Village of Tazlina
AK ...	St. George Island
AK ...	Native Village of St. Michael
AK ...	Aleut Community of St. Paul
AK ...	Stebbins Community
AK ...	Native Village of Stevens (IRA)
AK ...	Village of Stoney River
AK ...	Takotna Village
AK ...	Native Village of Tanacross
AK ...	Umkumiut Native Village
AK ...	Native Village of Tatitlek (IRA)
AK ...	Native Village of Hamilton
AK ...	Telida Village
AK ...	Native Village of Teller
AK ...	Native Village of Tetlin (IRA)
AK ...	Traditional Village of Togiak
AK ...	Native Village of Toksook Bay
AK ...	Tuluksak Native Community
AK ...	Native Village of Tuntutuliak
AK ...	Native village of Tununak (IRA)
AK ...	Twin Hills Village
AK ...	Native Village of Tanana (IRA)
AL ...	Poarch Band of Creek Indians
AZ ...	AK Chin Indian Community
AZ ...	San Juan Southern Paiute Council
AZ ...	Yavapai-Prescott Board of Directors
AZ ...	Yavapai-Apache Community Council
AZ ...	White Mountain Apache Tribal Council
AZ ...	Tohono O' odham Council
AZ ...	Quechan Tribal Council
AZ ...	San Carlos Tribal Council
AZ ...	Salt River Pima-Maricopa Indian
AZ ...	Pascua Yaqui Tribal Council
AZ ...	Colorado river Tribal Council
AZ ...	Tonto Apache Tribal Council
AZ ...	Cocopah Tribal Office
AZ ...	Kaibab Paiute tribal Council
AZ ...	Mohave-Apache Community
AZ ...	Hualapai Tribal Council
AZ ...	Havasupai Tribal Council
AZ ...	Hopi Tribal Council
AZ ...	Gila River Indian Community
CA ...	Paskenta Band of Nomlaki Indians
CA ...	Pechanga Band of Mission
CA ...	Picayune Rancheria
CA ...	Pinoleville Indian Reservation
CA ...	Pit River Tribal Council
CA ...	Potter valley Rancheria
CA ...	Redding Rancheria
CA ...	Ramona Band oc Cahuillla
CA ...	Coast Indian Community of the
CA ...	Redwood Valley Rancheria
CA ...	Pauma Band of Mission Indians
CA ...	Rincon Band of Mission Indians
CA ...	Quartz Valley Reservation
CA ...	Pala Band of Mission
CA ...	North Fork Rancheria
CA ...	Morongo Band
CA ...	Mooretown Rancheria
CA ...	Middletown Rancheria
CA ...	Mesa Grande Band of Mission
CA ...	Manzanita General Council
CA ...	Robinson Rancheria

APPENDIX B—Continued

State	Tribe name
CA ...	Lyton Rancheria
CA ...	Scotts Valley Band of Pomo
CA ...	Los Coyotes Band of Mission
CA ...	Lone Pine reservation
CA ...	Laytonville Rancheria
CA ...	La Posta Band
CA ...	Manchester/Point Arena
CA ...	Stewarts Point Rancheria
CA ...	Yurok Tribe
CA ...	Viejas Tribal Council
CA ...	Upper Lake Rancheria
CA ...	United Auburn Indian
CA ...	Twenty Nine Palms Band of
CA ...	Tuolumne Me-wuk Rancheria
CA ...	Tule River Reservation
CA ...	Trinidad Rancheria
CA ...	Torres-Martinez Desert Cahuilla
CA ...	Timbisha Shoshone Tribe
CA ...	Table Mountain Rancheria
CA ...	Table Bluff Rancheria
CA ...	Santa Ynez Band of Mission
CA ...	Susanville Rancheria
CA ...	Bear River Band of Rohnerville
CA ...	Soboba Band of Mission Indians
CA ...	Smith River Rancheria
CA ...	Shingle Springs Rancheria
CA ...	Sherwood Valley Rancheria
CA ...	Fort Independence Reservation
CA ...	Santa Ysabel Band of Mission
CA ...	La Jolla Band
CA ...	Santa Rosa Reservation
CA ...	Santa Rosa Rancheria
CA ...	San Pasqual Band
CA ...	San Manuel Band of Mission
CA ...	Rumsey Rancheria
CA ...	Round Valley Reservation
CA ...	Sycuan Business Committee
CA ...	Big Lagoon Rancheria
CA ...	Cahuilla Band of Mission
CA ...	Cabazon Indians of California
CA ...	Buena Vista Rancheria
CA ...	Bridgeport Indian Colony
CA ...	Blue Lake Rancheria
CA ...	Karuk Tribe of California
CA ...	Big Valley Rancheria
CA ...	Grindstone Rancheria
CA ...	Campo Band of Mission Indians
CA ...	Ione Band of Miwok
CA ...	Bishop Reservation
CA ...	Berry Creek Rancheria
CA ...	Benton Paiute Reservation
CA ...	Barona General Business
CA ...	Alturas Rancheria
CA ...	Agua Caliente Tribal Council
CA ...	Winemucca Indian Colony
CA ...	Woodfords Community Council
CA ...	Fort Mohave Tribal Council
CA ...	Big Pine Reservation
CA ...	Elem Indian Colony of Pomo
CA ...	Jackson Rancheria
CA ...	Big Sandy Rancheria
CA ...	Jamul Band of Mission Indians
CA ...	Cedarville Rancheria
CA ...	Hoopa Valley Tribal Council
CA ...	Guidiville Rancheria
CA ...	Greenville Rancheria
CA ...	Chemehuevi Tribal Council
CA ...	Inaja-Cosmit Band of Mission
CA ...	Elk Valley Rancheria
CA ...	Hopland Reservation
CA ...	Dry Creek Rancheria
CA ...	Cuyapaipe Band of Mission

APPENDIX B—Continued

State	Tribe name
CA ...	Coyote Valley Reservation
CA ...	Cortina Rancheria
CA ...	Colusa Rancheria
CA ...	Cold Springs Rancheria
CA ...	Cloverdale Rancheria
CA ...	Chico Rancheria
CA ...	Chicken Ranch Rancheria
CA ...	Fort Bidwell Reservation
CO ..	Southern Ute Tribe
CT ...	Mohegan Tribe of Indians of
FL	Seminole Tribe of Florida
IA	Sac & Fox Tribal Council
ID	Northwestern Band of Shoshoni
ID	Nez Perce Tribal Executive
ID	Kootenai Tribal Council
ID	Fort Hall Business Council
ID	Coeur D' Alene Tribal Council
KS ...	Prairie Band Potawatomi of
KS ...	Kickapoo Tribe of Kansas
ME ..	Passamaquoddy-Indian
ME ..	Passamaquoddy-Pleasant Point
ME ..	Penobscot Nation
MI	Little Traversa Bay Band of
MI	Saginaw Chippewa Tribal
MI	Bay Mills Executive Council
MI	Lac Vieux Desert Band of Lake
MI	Grand Traverse Tribal Council
MI	Hannahville Indian Community
MI	Keweenaw Bay Tribal Council
MI	Sault Ste. Marie Chippewa
MI	Pokagon Band of Potawatomi
MI	Little River Band of Ottawa
MN ..	Mille Lacs Reservation Business
MN ..	White Earth Reservation
MN ..	Prairie Island Community
MN ..	Leech Lake Reservation
MN ..	Shakopee Sioux Business
MN ..	Upper Sioux Board of Trustees
MN ..	Red Lake Band of Chippewa
MN ..	Fond du Lac Reservation
MN ..	Bois Forte Reservation Tribal
MN ..	Minnesota Chippewa Tribal
MN ..	Lower Sioux Indian Community
MN ..	Grand Portage Reservation
MO ..	Eastern Shawnee Tribe of
MT ...	Confederated Salish & Kootenai
ND ...	Three Affiliated Tribes Business
ND ...	Standing Rock Sioux Tribe
ND ...	Turtle Mountain Tribal Council
NE ...	Winnebago Tribal Council
NM ..	Pueblo of Santa Ana
NM ..	Pueblo of Tesuque
NM ..	Pueblo of Taos
NM ..	Pueblo of Santa Clara
NM ..	Pueblo of Sandia
NM ..	Pueblo of San Juan
NM ..	Pueblo of San Felipe
NM ..	Pueblo of San Ildefonso
NM ..	Pueblo of Santo Domingo
NV ...	South Fork Band Council
NV ...	Moapa Band of Paiute
NV ...	Lovelock Tribal Council
NV ...	Pyramid Lake Paiute Tribal
NV ...	Reno-Sparks Tribal Council
NV ...	Shoshone Paiute Business
NV ...	Summit Lake Paiute Council
NV ...	Battle Mountain Band Council
NV ...	Wells Indian Colony Band
NV ...	Walker River Paiute tribal Council
NV ...	Washoe Tribal Council
NV ...	Carson Colony Community
NV ...	Dresslerville Community

APPENDIX B—Continued

State	Tribe name
NV ...	Stewart Community Council
NV ...	Yomba Tribal Council
NV ...	Las Vegas Tribal Council
NV ...	Tribal Council of the Te-Moak
NV ...	Yerington Paiute Tribal Council
NV ...	Fort McDermitt Tribal Council
NV ...	Fallon Business Council
NV ...	Ely Colony Council
NV ...	Elko Band Council
NV ...	Duckwater Shoshone Tribal
NY ...	Oneida Indian Nation of New
NY ...	Onondaga Nation
NY ...	Seneca Nation of Indians
OK ...	Kaw Executive Committee
OK ...	Miami Tribe of Oklahoma
OK ...	Kickapoo of Oklahoma Business
OK ...	Kialegee Tribal Town
OK ...	Cherokee Nation of Oklahoma
OK ...	Alabama-Quassarte Tribal
OK ...	Ponca Business Committee
OK ...	Kiowa Business Committee
OK ...	Otoe-Missouria Tribal Council
OK ...	Choctaw Nation of Oklahoma
OK ...	Iowa Tribe of Oklahoma
OK ...	Modok Tribe of Oklahoma
OK ...	Osage Nation of Oklahoma
OK ...	Ottawa Tribe of Oklahoma
OK ...	Wyandotte Tribe of Oklahoma
OK ...	Pawnee Business Council
OK ...	Peoria Indian Tribe of Oklahoma
OK ...	Quapaw Tribal Business
OK ...	United Keetoowah Band of
OK ...	Chickasaw Nation
OK ...	Muscogee Creek Nation of
OK ...	Thlopthlocco Tribal Town
OK ...	Seminole Nation of Oklahoma
OK ...	Seneca-Cayuga Tribe of
OR ..	Confederated Tribes of the Grande
OR ..	Klamath General Council
OR ..	Cow Creek Band of Umpqua
OR ..	Confederated Tribes of the
OR ..	Confederated Tribes of Coos
OR ..	Burns-Paiute General Council
OR ..	Coquille Indian Tribes
RI	Narrangansett Indian Tribe
SD ...	Sisseton-Wahpeton Sioux Tribal
SD ...	Yankton Sioux Tribal Business
TX ...	Kickapoo Traditional Tribe
UT ...	Goshute Business Council
UT ...	Unitah & Ouray Tribal Business
UT ...	Skull Valley General Council
UT ...	Paiute Indian Tribe of Utah
WA ..	Upper Skagit Tribal Council
WA ..	Lummi Business Council
WA ..	Yakama Tribal Council
WA ..	Kalispel Business Commitee
WA ..	Muckleshioot Tribal Council
WA ..	Sauk-Suiattle Tribal Council
WA ..	Chehalis Business Council
WA ..	Jamestown S' Klallam Tribal
WA ..	Colville Business Council
WA ..	Lower Elwha Community
WA ..	Makah Tribal Council
WA ..	Nisqually Indian Community
WA ..	Nooksac Indian Tribal Council
WA ..	Port Gamble S' Klallam Tribe
WA ..	Puyallup Tribal Council
WA ..	Quileute Tribal Council
WA ..	Quinault Indian Nation
WA ..	Hoh Tribal Business Council
WI ...	Forest County Potawatomi
WI ...	The Ho-Chunk Nation

APPENDIX B—Continued

State	Tribe name
WI ...	Lac Courte Oreilles Governing
WI ...	Lac du Flambeau Tribal Council
WI ...	Bad River Tribal Council
WI ...	Menominee Indian Tribe of
WI ...	Onida Tribal Council
WI ...	Red Cliff Tribal Council
WI ...	Sokagon Chippewa Tribal
WI ...	Stockbridge—Munsee Tribal
WI ...	St. Croix Council

Appendix C—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract; the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form —LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Signature

_____

Title

_____

Organization

_____

Date

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For material change only** Year_____ Quarter_____ date of last report_____

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known.* **Congressional District,** *if known*	**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known*
6. Federal Department/Agency:	**7. Federal Program Name/Description:** **CFDA Number,** *if applicable:*
8. Federal Action Number, ***if known***:	**9. Award Amount,** ***if known***: $
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*

Items 11 through 15 are deleted.

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

BILLING CODE 4184–01–C

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central pint is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW., Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identification must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By singing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure or the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which

reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [Page 33043] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

[FR Doc. 97–12939 Filed 5–15–97; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0151]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by June 16, 1997.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Judith V. Bigelow, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1479.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Application for Exemption From Federal Preemption of State and Local Medical Device Requirements—21 CFR Part 808—(OMB Control No. 0910–0129—Reinstatement)

Section 521(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360k(a)) provides that no State or local government may establish, or continue in effect, any requirement with respect to a medical device that is different from, or in addition to, any Federal requirement applicable to the device under the act. Under section 521(b) of the act, following receipt of a written application from the State or local government involved, FDA may exempt from preemption a requirement that is more stringent than the Federal requirement, or that is necessitated by compelling local conditions and compliance with the requirement would not cause the device to be in violation of any portion of any requirement under the act. Exemptions are granted by regulation issued after notice and opportunity for an oral hearing.

The regulations in 21 CFR 808.20 require a State or local government that is seeking an exemption from preemption to submit an application to FDA. The application must include a copy of the State or local requirement, as well as information about its interpretation and application, and a statement as to why the applicant believes that the requirement qualifies for exemption from preemption under the act. FDA will use the information in the application to determine whether the requirement meets the criteria for exemption in the act and whether granting an exemption would be in the interest of the public health.

In addition, 21 CFR 808.25 provides that an interested person may request a hearing on an application by submitting a letter to FDA following the publication by FDA of a proposed response to the application.

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
808.20	3	1	3	100	300
808.25	3	1	3	10	30
Total	6	2	6	110	330

There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based its estimates of the number of submissions expected on the number of submissions submitted in the last 3 years and on the number of inquiries received indicating that applications would be submitted in the next year. FDA based its estimates of the time required to prepare submissions on discussions with those who have prepared submissions in the last 3 years.

Dated: April 25, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–12952 Filed 5–15–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97F–0181]

Exxon Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Exxon Chemical Co. has filed a petition proposing that the food additive regulations be amended to change the melting point range specification for polypropylene intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202 418–3098.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 7B4544) has been filed by Exxon Chemical Co., P.O. Box 3272, Houston, TX 77253–3272. The petition proposes to amend the food additive regulations in § 177.1520 *Olefin polymers* (21 CFR 177.1520) to change the melting point range for propylene polymers intended for use in contact with food from 160–180 °C to 150–180 °C.

The agency has determined under 21 CFR 25.24(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: May 2, 1997.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–12953 Filed 5–15–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4200–N–62]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: June 16, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 7, 1997.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: American Housing Survey (AHS)—1997 National Sample.

Office: Policy Development and Research.

OMB Approval Number: 2528–0017.

Description of the Need for the Information and its Proposed Use: The 1997 AHS-National is a longitudinal study that collects current information on the quality, availability, and cost of the housing inventory. It also provides information on the characteristics of occupants. Federal and local government agencies use AHS data to evaluate housing issues.

Form Number: AHS–26(L), 27(L), and 28(L).

Respondents: Individuals or households.

Frequency of Submission:

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	56,000		1		.56		31,277

Total Estimated Burden Hours: 31,277.

Status: Revision.

Contact: Duane T. McGough, HUD, (202) 708–1060; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 7, 1997.

[FR Doc. 97–12840 Filed 5–15–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4200–N–61]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: June 16, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 7, 1997.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Report on Section 8 Program Utilization.

Office: Housing.

OMB Approval Number: 2502–0439.

Description of the Need for the Information and its Proposed Use: The data collected will be used to monitor the following: the rate at which Section 8 programs are leased; minimized exposure to vacancy losses; project vacancy rates; identify and document cases where a reduction in the number of contracted units are leased to elderly, handicapped, or disabled tenants; and retrieve information to answer questions.

Form Number: HUD–52684.

Respondents: State, Local or Tribal Government, Business or Other for-profit, and not-for-profit institutions.

Frequency of Submission: Quarterly and annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Quarterly Reporting	3,814		4		.25		3,814
Annual Reporting	16,681		1		.25		4,170

Total Estimated Burden Hours: 7,984.

Status: Reinstatement, without changes.

Contact: Barbara D. Hunter, HUD, (202) 708–3944; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 7, 1997.

[FR Doc. 97–12841 Filed 5–15–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–03]

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.

EFFECTIVE DATE: May 16, 1997.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 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 toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: May 9, 1997.

Jacquie M. Lawing,

General Deputy Assistant Secretary.

[FR Doc. 97–12839 Filed 5–15–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4213–C–02]

Notice of Funding Availability for FY 1997 Historically Black Colleges and Universities Program; Correction

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability; correction.

SUMMARY: This notice corrects information that was provided in the notice of funding availability (NOFA) for the Historically Black Colleges and Universities Program for fiscal year 1997, published in the **Federal Register** on May 12, 1997 (62 FR 26180). This notice clarifies that 10 bonus points are available for eligible applicants who work with their jurisdictions to affirmatively further fair housing.

DATES: This notice does not affect the deadline date provided in the May 12, 1997 NOFA. Applications must still be received at HUD Headquarters and field offices before 5 p.m. eastern standard time on July 28, 1997.

ADDRESSES: This notice does not affect the application submission information provided in the May 12, 1997 NOFA. An originally signed application and two copies shall be submitted to the following address: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, S.W., Room 7251, Washington, D.C., 20410–3500; ATTN: HBCU Program. In addition, one copy of the application must also be sent to the Community Planning and Development (CPD) Director in the HUD field office serving the State in which the applicant is located. A listing of HUD field offices with HBCUs located in their jurisdiction appeared as Appendix A to the May 12, 1997 NOFA.

FOR FURTHER INFORMATION CONTACT: Ms. Delores Pruden or Mr. John Simmons, Historically Black Colleges and Universities Program, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th St., S.W., Washington, DC 20410; telephone (202) 708–1590 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service toll-free at 1–800–877–8339. Information may also be obtained from the HUD field office located in the applicant's geographic area. See Appendix A to the May 12, 1997 NOFA for names, addresses and telephone numbers, or for general information, applicants can call Community Connections at 1–800–998–9999.

SUPPLEMENTARY INFORMATION: On May 12, 1997, HUD published in the **Federal Register** the Notice of Funding Availability (NOFA) for the Historically Black Colleges and Universities Program for fiscal year (FY) 1997 (62 FR 26180). The May 12, 1997 NOFA provided that applicants that receive the minimum number of points (70 points) under the four selection criteria (Addressing the Program Objective; Distress, Need(s) and Impact; Capability; and Feasibility) may earn bonus points for, among other factors, affirmatively furthering fair housing. While the heading for the paragraph describing these bonus points (paragraph d. under the subheading ''Bonus Points,'' in section I.C. of the NOFA) indicates that the applicant may earn 10 bonus points for affirmatively furthering fair housing, the first sentence of that paragraph indicates that applicants may earn only 5 bonus points. HUD is publishing this notice to clarify that 10 bonus points will be awarded to eligible applicants that work with their jurisdictions to affirmatively further fair housing.

Accordingly, FR Doc. 97–12452, the NOFA for the Historically Black Colleges and Universities Program, published in the **Federal Register** on May 12, 1997 (62 FR 26180), is amended on page 26185, column 2, in section I.C., under the subheading ''Bonus Points,'' by correcting the first sentence of paragraph d. (''Affirmatively Furthering Fair Housing, 10 points'') to read as follows:

I. Purpose, Objectives, and Substantive Description

* * * * *

C. Selection Process, Optional Match and Selection Criteria

* * * * *

Bonus Points (maximum points: 25)

* * * * *

d. Affirmatively Furthering Fair Housing, 10 points.

* * * * *

Ten bonus points will be awarded to applicants who work with their jurisdictions to affirmatively further fair housing.

* * * * *

Dated: May 12, 1997.

Kenneth C. Williams,

Deputy Assistant Secretary for Grant Programs.

[FR Doc. 97–12843 Filed 5–15–97; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Kern Water Bank Natural Community Conservation Plan/Habitat Conservation Plan, Kern County, California

AGENCY: Fish and Wildlife Service.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Kern Water Bank Authority (Authority) has applied to the Fish and Wildlife Service for two 75-year incidental take permits pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act), relating to the Kern Water Bank's 19,900 acres of land in Kern County, California. The application has been assigned permit number PRT–828086. One permit, the Project Permit, is to allow the incidental take by the Authority for the operation of the proposed project on the Kern Water Bank. The second permit, the Master Permit, is to allow third parties in designated areas of the southern San Joaquin Valley, California, to acquire credits in the conservation bank to be established by the Authority with the prior approval of the Service and to become included parties under the Master Permit. In certain circumstances, the Authority also may be able to use conservation credits on its own behalf for other projects and thereby rely on the incidental take authority of the Master Permit.

The proposed incidental take covered by the Project Permit would occur due to habitat loss resulting from the Authority's proposed project to use the Kern Water Bank to acquire and bank water when available, to utilize the banked water for agricultural and other purposes, to engage in farming activities and to create a conservation bank (collectively, the Project). The proposed incidental take covered by the Master Permit would occur due to habitat loss resulting from projects of third persons, and other projects of the Authority in Kern County, the Allensworth area of Tulare County, and the Kettleman Hills area of Kings County.

The Authority requests coverage of 17 listed species (5 plant, 12 animal) and an additional 28 unlisted species (10 plant, 18 animal) that may be found on the Kern Water Bank and are currently sufficiently rare that they may become listed at some time in the near future. The Authority further requests coverage of an additional 116 species (29 plant,

87 animal) which the Authority believes may become rare over the life of the Permits and which may conceivably come to colonize the Kern Water Bank, but for which the impact of the Project should be negligible or beneficial. The Natural Community Conservation Plan/Habitat Conservation Plan (Plan) proposes to conserve all 161 species according to standards required for listed species under the Act. Unlisted covered species would be named on the permits with delayed effective dates. Barring unforeseen circumstances, incidental take of the unlisted covered species would be authorized upon their listing under the Act. The draft Implementing Agreement contains a No Surprises assurance, whereby no additional mitigation or compensation will be required of the permittee, except under extraordinary circumstances. Concurrently with the proposed issuance of the Federal permits, the California Department of Fish and Game proposes to issue management authorizations for the 161 species under Sections 2081 and 2835 of the California Endangered Species Act.

The Fish and Wildlife Service also announces the availability of an Environmental Assessment for the incidental take permit application, which includes the proposed Plan fully describing the proposed project and mitigation, and the accompanying Implementing Agreement. In addition, the application package includes a draft Conservation Bank Agreement, and a draft Security Agreement. This Notice is provided pursuant to Section 10(a) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Comments are specifically requested on the appropriateness of the No Surprises assurance contained in this application, specifically outlined in section 5 of the Implementation Agreement as it applies to the Authority's permit and the Master permit. All comments received, including names and addresses, will become part of the Administrative Record and may be made available to the public.

DATES: Written comments on the permit application, Environmental Assessment and Implementing Agreement should be received on or before June 30, 1997.

ADDRESSES: Comments regarding the application or adequacy of the Environmental Assessment and Implementing Agreement should be addressed to the Fish and Wildlife Service, Sacramento Field Office, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821–6340. Please refer to permit number PRT–828086 when submitting comments. The documents will available for public inspection, by appointment, during normal business hours at the above address. Individuals wishing copies of the application, Environmental Assessment, Implementing Agreement, Conservation Bank Agreement or Security Agreement for review should immediately contact Mr. Kenneth Bonesteel, Project Manager, Kern Water Bank Authority, 33141 E. Lerdo Highway, P.O. Box 80607, Bakersfield, California 93380–0607, telephone (805) 399–8735; fax (805) 399–9751.

FOR FURTHER INFORMATION CONTACT: Mr. Peter A. Cross, San Joaquin Valley Branch Chief, Sacramento Field Office, telephone (916) 979–2710; fax (916) 979–2723.

SUPPLEMENTARY INFORMATION: The ''take'' of threatened and endangered species is prohibited under Section 9 of the Act and its implementing regulations. ''Take'' is defined, in part, as killing, harming, or harassing listed species, including significant habitat modification that results in death of or injury to listed species. Under limited circumstances, the Service may issue permits to take listed species if such taking is incidental to otherwise lawful activities. Regulations governing permits are found at Title 50, Code of Federal Regulations, sections 17.22 and 17.32. The proposed Master and Project Permits for Kern Water Bank would authorize the incidental take of 17 species: San Joaquin kit fox (*Vulpes macrotis mutica*), Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), blunt-nosed leopard lizard (*Gambelia silus*), giant kangaroo rat (*Dipodomys ingens*), American peregrine falcon (*Falco peregrinus anatum*), valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), giant garter snake (*Thamnophis gigas*), Aleutian Canada goose (*Branta canadensis leucopareia*), vernal pool fairy shrimp (*Branchinecta lynchi*), conservancy fairy shrimp (*Branchinecta conservatio*), vernal pool tadpole shrimp (*Lepidurus packardi*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Joaquin woolly-threads (*Lembertia congdonii*), Hoover's woolly-star (*Eriastrum hooveri*), California jewel flower (*Caulanthus californicus*), Kern mallow (*Eremalche parryi kernensis*), and Bakersfield cactus (*Opuntia basilaris* var. *treleasei*).

Background

The Plan documents a plan to accomplish both water conservation and environmental objectives. The primary water conservation objective is the storage of water in aquifers during times of surplus for later recovery during times of shortage. The primary environmental objective is to set aside large areas of the Kern Water Bank for threatened and endangered species and to implement a program to protect and enhance the habitat.

The basic objectives of the proposed Plan for the Kern Water Bank project are to (1) allow the economical development of water recharge and recovery facilities, (2) preserve compatible upland habitat and other sensitive areas of natural habitat and rare plants, (3) conserve species listed as threatened or endangered pursuant to Federal and State environmental laws (listed species), (4) recreate intermittent wetland/rangeland habitat, (5) provide a conservation bank for third parties, and (6) permit farming.

Of the 19,900 acres that constitute the Kern Water Bank property, 5,900 acres are proposed for basins for routine recharge activities and 481 acres will be used for permanent water banking facilities. Between the basins will be areas that will never be flooded. Some of these areas have existing populations of listed plants. These plants will be preserved in special areas totaling 960 acres. Other areas between basins, totaling 5,592 acres, will revert to habitat. Additionally, 530 acres will be preserved and managed for mitigation of previous Department of Water Resources projects. Of the remaining land, 3,170 acres will be used for farming and 3,267 acres will be used as a conservation bank (to be used as potential mitigation for activities by third parties within designated areas of the Southern San Joaquin Valley). Of the 3,267 acres in the conservation bank, the Authority may use up to 490 acres for commercial development.

The Project incorporates mitigation and compensation for impacts to wildlife habitat and other natural resources resulting from implementation of the Project. Approximately 10,349 acres, or over 52 percent, of the Project area will be set aside and limited to uses that are compatible with the habitat values of the property. These lands will be protected and managed for their wildlife habitat values throughout the life of the Project. Certain lands will be protected from development in perpetuity upon the approval of the Project. Other lands will be protected in perpetuity upon the use of conservation credits established by the Project.

The Master Permit will allow the incidental take of listed species by third persons, and in certain circumstances the Authority, for activities in specified

areas of Kern County, the Allensworth area of Tulare County, and the Kettleman Hills area of Kings County, California. Third persons will have to enter into an agreement with the Fish and Wildlife Service which sets out that person's mitigation obligations, including the number of off-site acres the person must acquire in order to obtain incidental take authority. Once the Authority sells the conservation credits to the third person, the Fish and Wildlife Service will issue a certificate of inclusion to that person establishing that the person has the authority to commit the incidental take of listed species pursuant to the Master Permit. The purpose of the Master Permit is to encourage the use of the conservation bank (thereby insuring protection in perpetuity of bank lands) and to streamline the Fish and Wildlife Service's permitting process for projects with minor impacts.

The Implementing Agreement contains a section which implements the Service's ''No Surprises'' Policy. Under this section, the Fish and Wildlife Service may not require additional mitigation or compensation, including commitments of additional land or financial compensation, from the Authority unless the Fish and Wildlife Service makes a finding of ''extraordinary circumstances,'' defined as a significant and substantial adverse change in the population of a species covered by the Plan. If the Fish and Wildlife Service makes a finding of extraordinary circumstances which warrants requiring additional mitigation or compensation, the additional mitigation or compensation the Fish and Wildlife Service may require is limited to modifying the management of the Kern Water Bank, excluding that portion of the bank used for recharge basins and that portion used for farming. If additional land or financial compensation is needed, the primary responsibility to provide this compensation rests with the Federal government.

In compliance with National Environmental Policy Act, the Environmental Assessment examines the environmental impacts of issuing the proposed Incidental Take Permits and the effects of implementing the proposed Plan and alternative plans. Although a number of alternative conservation configurations and mechanisms were considered, the Environmental Assessment analyzes four alternatives in detail. The Environmental Assessment considers (1) the proposed action, (2) the proposed action excluding the Master Permit, (3) the proposed action, but reducing the amount of acreage that could be covered by recharge basins to 3,258 acres, and (4) a no permit alternative.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and the National Environmental Policy Act of 1969 regulations (40 CFR 1506.6). The Fish and Wildlife Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the National Environmental Policy Act regulations and section 10(a) of the Endangered Species Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of the listed species. The final permit decision will be made no sooner than 45 days from the date of this notice.

Dated: May 8, 1997.

Don Weathers,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–12854 Filed 5–15–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Schedule of Regional Consultation Sessions on Tribal Shares

Introduction

The Bureau of Indian Affairs (BIA) is authorized by the Indian Self-Determination and Education Assistance Act, as amended, Public Law 93–638, to implement a process whereby Tribes can contract and compact functions of the BIA. Public Law 103–413 expanded the scope of Public Law 93–638 by providing Tribes the option to take their ''share'' from BIA administrative and program accounts, based on savings due to contracting and also based on additional administrative functions being assumed by Tribes, without regard to organizational level. This process is known as the ''Tribal Shares Process.''

The BIA has been working for the past two years to define a ''tribal shares determination process'' to identify which functions currently performed by the BIA can be assumed by Tribes. A federal workgroup was formed in April 1995 to identify which BIA functions were ''inherently federal,'' and which BIA functions were available for contracting and compacting. The workgroup submitted their work product to the Area Offices for review and tribal consultation.

A majority of tribal leaders did not agree with the BIA's work product, and requested further consultation and establishment of a Tribal Workgroup to conduct a similar review. A small tribal workgroup was formed in July 1996, in consultation with the National Congress of American Indians. The Workgroup reviewed the BIA's work product and issued its findings recommendations for continuation of the effort to define a tribal shares process. This workgroup, however, did not continue in its advisory capacity, due to tribal dissatisfaction with the lack of equal representation of self-governance, self-determination and direct service Tribes.

In response to this dissatisfaction, the Deputy Commissioner formed a more expanded, representative workgroup in September 1996. This tribal workgroup is comprised of 24 tribal representatives; two from each of the twelve BIA Areas. The workgroup has assisted the BIA in reviewing and refining a list of inherently federal functions and non-inherently federal functions of the BIA. This listing will be one of many topics reviewed at the consultation sessions. The schedule for the consultation sessions is listed below.

Summary

The BIA will be holding three regional consultation sessions on the Tribal Shares Process during June and July 1997. The sessions are for tribal consultation on the Tribal Shares Process. Tribes will have the opportunity to review and provide comments on the BIA's identification of inherently federal and non-inherently federal functions of the BIA.

Regional Consultation Sessions: The three regional consultation sessions will accommodate all twelve Areas of the BIA. Billings, Aberdeen, Eastern and Minneapolis Area tribes will attend Session 1, in Bloomington, MN. The Juneau, Portland, and Sacramento Area tribes will attend Session 2, in Seattle, WA. Phoenix, Albuquerque, Navajo, Anadarko, and Muskogee Area tribes will attend Session 3, in Tempe, AZ.

Areas may hold additional Area-wide consultation sessions if needed.

Dates and Locations

Session 1. June 17–18, 1997, Bloomington, MN. Days Inn Airport, 1901 Killebrew Drive, Bloomington, MN 55425. Telephone (612) 854–8400.

Session 2. June 24–25, 1997, Seattle, WA. Radisson Hotel Seattle Airport, 17001, Pacific Highway South, Seattle, WA 98188. Telephone (206) 244–6000.

Session 3. July 22–23, 1997, Tempe, AZ. Sheraton Tempe Mission Palms, 60 East 5th Street, Tempe, AZ 85281. Telephone (602) 894–1400, or (800) 547–8705.

FOR FURTHER INFORMATION CONTACT: For further information, contact Shirley LaCourse, Bureau of Indian Affairs, at telephone (202) 208–4172.

Conclusion

The consultation sessions are open to all interested parties.

Dated: May 12, 1997.

Hilda A. Manuel,

Deputy Commissioner of Indian Affairs.

[FR Doc. 97–12926 Filed 5–15–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Notice of Approved Tribal-State Compact

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal State Gaming Compact between the Confederated Salish and Kootenai Tribes of the Flathead Nation and the State of Montana, which was executed on March 14, 1997.

DATES: This action is effective May 16, 1997.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: May 8, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–12821 Filed 5–15–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–58975]

Termination of Recreation and Public Purposes (R&PP) Classification; Nevada

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice.

SUMMARY: This notice terminates R&PP Classification N–58975. The termination of this classification is for record-clearing purposes. The subject lands will remain segregated from all forms of appropriation under the public land laws, including the general mining laws, due to an overlapping segregation for disposal by exchange.

EFFECTIVE DATE: Termination of the classification is effective upon publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Sharon DiPinto, BLM Las Vegas District Office, 4765 Vegas Drive, NV 89108, 702–647–5062. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

SUPPLEMENTARY INFORMATION: On June 21, 1994, the Clark County School District filed an application with BLM for a middle school site pursuant to the R&PP Act. On February 16, 1996, the lands requested were classified suitable for lease/conveyance under that act. The school was not constructed and the applicant withdrew their application by letter dated February 6, 1997. Pursuant to the R&PP Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*), the regulation contained in 43 CFR 2091.7–1, and the authority delegated by Appendix 1 of the Bureau of Land Management Manual 1203, R&PP Classification N–58975 is hereby terminated in its entirety for the following described land:

Mount Diablo Meridian, Nevada

T. 23 S., R. 62 E.,
Sec. 6, Lot 5.
Containing 37.98 acres.

Dated: May 2, 1997.

Michael F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 97–12896 Filed 5–15–97; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–985–0777–66; WYW–138720]

Realty Action; Direct Sale of Public Land; Cody Resource Area, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management has determined that the following land is suitable for direct sale to Peter M. Scripps under Sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) of 1976, (90 STAT. 2750, 2757), (43 U.S.C. 1713, 1719), (43 CFR 2711.3–3 [1] and [5]) and (43 CFR 270) at not less than fair market value. The land will not be offered for sale until at least 60 days after the date this notice is published in the **Federal Register**.

Sixth Principal Meridian, Wyoming

T. 51 N., R. 102 W.,
Tract 72C.
Containing 9 acres more or less.

FOR FURTHER INFORMATION CONTACT: Duane Whitmer, Area Manager, Bureau of Land Management, Cody Resource Area, P.O. Box 518, Cody, Wyoming 82414–0518, 307–587–2216.

SUPPLEMENTARY INFORMATION: The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action, or 270 days from the date of publication of this notice, which ever occurs first. The land would be offered by direct sale to Peter M. Scripps, an adjacent private landowner, at fair market value. Mr. Scripps would pay almost all of the administrative costs of the sale. This sale is consistent with Bureau of Land Management policies and the Cody Resource Management Plan (RMP) approved November 8, 1990. As indicated in the Cody RMP, the preferred method of land disposal to a private landowner is by exchange. However, because of the small acreage and relatively low dollar value involved, BLM believes a sale is more appropriate.

The purpose of this sale is to resolve a conflict with an inadvertent placement of a private water well on public lands, to consolidate Mr. Scripps' holdings, and to dispose of an isolated parcel of public land that is difficult and uneconomical to manage. The 9 acre tract is adjoined on two sides by Mr. Scripps' land, and by state of Wyoming land on the other two sides. There is virtually no public access to the tract, except by foot or horseback across 0.75 to 1.5 miles of public and state land to the north and east. The unfenced tract consists of a moderately steep hillside covered with mostly sagebrush, grasses, and some trees. Little, if any, use of the land by the public has occurred in the past because of the isolated location. A public scoping notice regarding this proposed sale was published in the Cody Enterprise for three consecutive weeks from July 29, 1996 to August 12, 1996. No adverse comments were received.

Mr. Scripps would be required to submit a nonrefundable application fee of $50.00 in accordance with 43 CFR 2720, for conveyance of all unreserved mineral interests in the lands. There are no grazing privileges associated with the land.

Any patent issued will be subject to all valid existing rights. Specific patent reservations include:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All oil and gas will be reserved to the United States, together with the right to prospect for, mine, and remove the same.

3. All other existing rights of record.

The fair market value, planning document, and environmental assessment covering the proposed sale will be available for review at the Bureau of Land Management, Cody Resource Area, 1002 Blackburn, Cody, Wyoming 82414.

For a period of 45 days from the date this notice is published in the **Federal Register**, interested parties may submit comments to the Cody Resource Area, P.O. Box 518, Cody, Wyoming 82414–0518. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of Interior.

Comments, including names and street addresses of respondent will be available for public review at the Cody Resource Area Office, 1002 Blackburn, Cody, Wyoming during regular business hours (7:30 a.m. to 4:30 p.m.) Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: May 6, 1997.

Darrell Barnes,

Worland District Manager.

[FR Doc. 97–12847 Filed 5–15–97; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–956–97–1420–00]

Colorado: Filing of Plats of Survey

May 7, 1997.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 am., May 7, 1997. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

The plat (in 4 sheets) representing the dependent resurvey of a portion of the Tenth Standard Parallel North, on the south boundary, portions of the east and west boundaries, a portion of the subdivisional lines, and certain mineral claims, and the subdivision survey of sections 24 and 33, T. 41 N.,R. 11 W., New Mexico Principal Meridian, Group 1006, Colorado, was accepted April 16, 1997.

This survey was requested by the Forest Service for administrative purposes.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 27 and 34, and a metes-and-bounds survey of a portion of the west right-of-way of Grand County Road No. 33 in sections 27 and 34, and a survey of Parcel A in section 34, T. 1 N., R. 79 W., Sixth Principal Meridian, Group 1017, Colorado, was accepted April 28, 1997.

The plat representing the dependent resurvey of a portion of the west boundary and subdivisional lines, and the subdivision of section 19, and a metes-and-bounds survey of a portion of the east right-of-way of Grand County Road No. 3 in section 19, T. 1 N., R. 78 W., Sixth Principal Meridian, Group 1017, Colorado, was accepted April 28, 1997.

The plat representing the dependent resurvey of portions of the subdivisional lines and Tract 51, and the survey of the subdivision of Section 22, T. 1 N., R. 90 W., Sixth Principal Meridian, Group 1122, Colorado, was accepted April 21, 1997.

The supplemental plat created to facilitate a land exchange, creating new lots 14 and 15 from original lot 13 in section 11, T. 5 S., R. 81 W., Sixth Principal Meridian, Colorado, was accepted April 14, 1997.

The supplemental plat created to facilitate a land exchange, creating new lots 3 and 4 from previous lot 1 in section 29, T. 50 N., R. 9 E., New Mexico Principal Meridian, Colorado, was accepted April 21, 1997.

The protraction diagram No. 52 in T. 3 N., R. 79 W., Sixth Principal Meridian, Colorado, was accepted April 14, 1997.

These surveys were requested by BLM for administrative purposes.

Barry G. Krebs,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 97–12844 Filed 5–15–97; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Reclamation, Interior.

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) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before June 16, 1997.

ADDRESSES: Comments on this information collection should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Bureau of Reclamation, Paperwork Reduction Project (1006–0005), Washington DC 20503, Telephone (202) 395–7340. A copy of your comments should also be directed to the Bureau of Reclamation, D–5200, P.O. Box 25007, Denver, Colorado 80225–0007.

FOR FURTHER INFORMATION CONTACT: Bureau of Reclamation's Information Collection Officer, Susan Rush, at (303) 236–0305 extension 462 or by Internet at borinfocoll@usbr.gov.

SUPPLEMENTARY INFORMATION:

Title: Individual Landholder's Certification and Reporting Forms for Acreage Limitation, 43 CFR Part 426.

Abstract: This information collection requires certain landholders to complete forms demonstrating their compliance with the acreage limitation provisions of reclamation law. These forms are submitted to water districts who use the information to establish each landholder's status with respect to

landownership limitations, full-cost pricing thresholds, lease requirements, and other provisions of reclamation law. All landholders whose entire westwide landholding totals 40 acres or less is exempt from the requirement to submit forms. Landholders who are ''qualified recipients'' have RRA forms submittal thresholds of 80 acres or 240 acres depending on the district's RRM forms submittal threshold category where the land is held.

Bureau Form Numbers: 7–21INFO, 7–2180, 7–2180EZ, 7–2181, 7–2184, 7–2190, 7–2190EZ, 7–2191, 7–2194, 7–21PE, 7–21TRUST, 7–21VERIFY, 7–21IXS, 7–21FC, 7–21CONT–I, 7–21CONT–L, and 7–21CONT–O.

OMB Approval Number: 1006–0005.

Frequency: Annually.

Description of Respondents: Owners and lessees of land on Federal Reclamation projects, whose landholdings exceed specified RRA forms submittal thresholds.

Estimated Number of Respondents: 32,100.

Estimated Number of Responses per Respondent: 1.02.

Estimated Annual Responses: 32,750.

Estimated Total Annual Burden on Respondents: 11,500.

Reclamation will display a valid OMB control number on either the forms or the instructions associated with the forms. Persons who are required to respond to the information collection need not respond unless the OMB control number is current.

OMB has up to 60 days to approve or disapprove this information collection but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration. The public is being requested to comment on:

a. Whether the collection of information is necessary for the proper performance of the functions of Reclamation, including whether the information will have practical utility;

b. The accuracy of Reclamation's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

c. The quality, utility, and clarity of the information to be collected; and

d. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

All comments received on this information collection requested in **Federal Register** notice 62 FR 4329, Jan. 29, 1997, have been summarized and included in the request for OMB approval.

Dated: April 17, 1997.

J. Austin Burke,

Director, Program Analysis Office.

[FR Doc. 97–12852 Filed 5–15–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Reclamation, Interior.

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) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before June 16, 1997.

ADDRESSES: Comments on this information collection should be submitted to the Office of information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Bureau of Reclamation, Paperwork Reduction Project (1006–0006), Washington, DC 20503, Telephone (202) 395–7340. A copy of your comments should also be directed to the Bureau of Reclamation, D–5200, P.O. Box 25007, Denver, Colorado 80225–0007.

FOR FURTHER INFORMATION CONTACT: Bureau of Reclamation's Information Collection Officer, Susan Rush, at (303) 236–0305 extension 462 or by Internet at borinfocoll@usbr.gov

SUPPLEMENTARY INFORMATION:

Title: Certification Summary Form, Reporting Summary Form for Acreage Limitation, 43 CFR 426.

Abstract: These forms are to be used by water district offices to summarize individual landholder certification and reporting forms as required by the Reclamation Reform Act of 1982 (Title II of Pub. L. 97–293) and 43 CFR Part 426, Acreage Limitation Rules and Regulations. This information allows Reclamation to establish water users' compliance with Reclamation law.

Bureau Form Numbers: 7–21SUMM–R, 7–21SUMM–C, TAB A, B, C, D, E, F.

OMB Approval Number: 1006–0006.

Frequency: Annually.

Description of Respondents: Contracting organizations for Reclamation project irrigation water.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 40 hours per response.

Estimated Number of Respondents: 276.

Estimated Number of Responses per Respondent: 1.25.

Estimated Annual Responses: 345.

Estimated Total Annual Burden on Respondents: 13,800 hours.

Reclamation will display a valid OMB control number on either the forms or the instructions associated with the forms. Persons who are required to respond to the information collection need not respond unless the OMB control number is current.

OMB has up to 60 days to approve or disapprove this information collection but may respond after 30 days, therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration. The public is being requested to comment on:

a. Whether the collection of information is necessary for the proper performance of the functions of Reclamation, including whether the information will have practical utility;

b. The accuracy of Reclamation's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

c. The quality, utility, and clarity of the information to be collected; and

d. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

All comments received on this information collection requested in **Federal Register** notice 62 FR 4329, Jan. 29, 1997, have been summarized and included in the request for OMB approval.

Dated: April 17, 1997.

J. Austin Burke,

Director, Program Analysis Office.

[FR Doc. 97–12853 Filed 5–15–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(NIJ)–1131]

RIN 1121–ZA77

National Institute of Justice Solicitation for Evaluations of the Residential Substance Abuse Treatment for State Prisoners Program (1997)

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice ''Solicitation for Evaluations of the Residential Substance Abuse Treatment for State Prisoners Program (1997).''

DATES: The deadline for receipt of applications is close of business June 24, 1997.

ADDRESSES: Applications should be mailed to the National Institute of Justice, 633 Indiana Avenue, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6771.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Institute of Justice is soliciting proposals for evaluations of the Residential Substance Abuse Treatment for State Prisoners Program. Each of these state programs must: last between 6 and 12 months; be provided in residential facilities set apart from general population; be directed at substance abuse problems of the inmate; and intend to develop a number of skills so as to solve substance abuse and related problems. Each State must also ensure coordination between correctional representatives and other appropriate agencies.

It is expected that up to 14 separate awards of up to $60,000 will be granted for a period of 15 months. The evaluations will be for local programs in individual states with preference given to programs not currently under evaluation. Some discretion is provided in regard to specific topics but all evaluations must, to the extent possible, collaborate with the national evaluation of this program.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Solicitation for Evaluations of the Residential Substance Abuse Treatment for State Prisoners Program (1997)'' (refer to document no. SL000220). The solicitation is available electronically via the NCJRS Bulletin Board, which can be accessed via the Internet. Telnet to ncjrsbbs.ncjrs.org, or gopher to ncjrs.org:71. For World Wide Web access, connect to the NCJRS Justice Information Center at http://www.ncjrs.org. Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301–738–8895. Set the modem at 9600 baud, 8–N–1.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 97–12906 Filed 5–15–97; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 13, 1997.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5096 ext. 143). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer, Mine Safety and Health Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Title: Notification of Methane Detected in Mine Atmosphere.

OMB Number: 1219–0103 (reinstatement, without change).

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 8.

Estimated Time Per Respondent: 15 minutes.

Total Burden Hours: 31 hours.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $2,000.

Description: This collection of information requires operators of underground metal and nonmetal mines to (a) Notify the Mine Safety and Health Administration when there is an outburst, a blowout, or ignition of methane in the mine atmosphere; (b) test mine atmosphere for methane at least once a week, and to certify that the tests have been conducted, (c) inform the affected persons when examinations disclose hazardous conditions.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–12901 Filed 5–15–97; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Employment and Training Administration

General Statutory and Work-Flex Waiver Request; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation

program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of collection of the Workforce Flexibility (Work-Flex) Partnership Demonstration Program and General Statutory Waivers.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Writteen comments must be submitted to the office listed in the addressee section below on or before July 15, 1997.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Department of Labor, Employment and Training Administration, James M. Aaron, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone number (202) 219–5580, x174 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

Based on OMB request approvals 1205–0375 and 1205–0376, the ETA issued TEGLs 6–96 and 7–96 to provide guidance to the employment and training community and submittal of waivers. Because these waivers were granted under emergency procedures the period covered only extended to June 30. This period was subsequently extended until September 30. To permit States the opportunity to continue to submit such requests an extension of this authority is needed.

II. Current Actions

ETA is anticipating upwards of 600 waiver requests during the next several months. Only the waiver requests from Oregon have been approved thus far. The authority requested remains unchanged. It would permit States to submit general statutory waiver request covering Titles I–III of the JTPA and sections 8–10 of Wagner Peyser. The same exclusions would be retained under this request. Also it would permit submittal of work-flex applications if the full contingent of six States have not been approved based on the initial round of applications.

Type of Review: Extension of a currently approved collection.

Agency: U.S. Department of Labor/ETA.

Title: Workforce Flexibility (Work-Flex) Partnership Demonstration Program.

OMB Number: 1205–0375.

Affected Public: States.

Total Respondents: 56.

Frequency: On occasion.

Total Responses: 10 potential.

Average Time per Response: 80.

Estimated Total Burden Hours: 800.

Total Burden Cost (capital/startup): -0-.

Total Burden Cost (operating/maintaining): $2,500.

Title: General Statutory Waivers.

OMB Number: 1205–0376.

Affected Public: States.

Total Respondents: 56.

Frequency: On occasion.

Total Responses: 20 potential.

Average Time per Response: 80.

Estimated Total Burden Hours: 1600.

Total Burden Cost (capital/startup): -0-.

Total Burden Cost (operating/maintaining): $2,500.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 12, 1997.

Charles Atkinson,

Deputy Administrator, Office of Job Training Programs.

[FR Doc. 97–12900 Filed 5–15–97; 8:45 am]

BILLING CODE 4510–30–M.

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and 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 Determinations, 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 Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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MA970001 (Feb. 14, 1997)
MA970002 (Feb. 14, 1997)
MA970003 (Feb. 14, 1997)
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CA970105 (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

Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the 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, DC this 9th day of May 1997.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–12624 Filed 5–15–97; 8:45 am]

BILLING CODE 4510–27–M

LEGAL SERVICES CORPORATION

Notice of Availability of 1998 Competitive Grant Funds

AGENCY: Legal Services Corporation.

ACTION: Correction.

SUMMARY: In a notice published on April 24, 1997 (62 FR 20038), the Legal Services Corporation announced the availability of competitive grant funds to solicit grant proposals from interested parties who are qualified to provide effective, efficient and high quality civil legal services to eligible clients for calendar year 1998. Service area AL–3 in Alabama should have also been included.

A complete revised listing of service areas for competitive grant funds for calendar year 1998 follows:

State	Service area(s)
Arizona	AZ–1, NAZ–1
Arkansas	AR–3
District of Columbia	DC–1
California	CA–9, CA–25
Colorado	CO–2,CO–3,CO–5,NCO–1,MCO
Florida	FL–11
Guam	GU–1
Illinois	IL–1
Iowa	IA–1,IA–2,MIA
Louisiana	LA–1
Massachusetts	MA–4,MA–5,MA–10,MMA
Mississippi	MS–4,NMS–1
Missouri	MO–1
Nebraska	NE–3,MNE
New Jersey	NJ–1,NJ–2,NJ–3,NJ–4,NJ–5,NJ–6,NJ–7,NJ–8,NJ–9,NJ–10,NJ–11,NJ–12,NJ–13,NJ–14,MNJ
New York	NY–1,NY–3,NY–4,NY–5,NY–6,NY–7,NY–8,NY–9,NY–10,NY–13,NY–14,NY–15,NY–16,NY–17,NY–18,MNY
North Carolina	NC–1,NC–2,NC–3,NC–4,NNC–1,MNC
North Dakota	ND–1,ND–2,NND–1,NND–2,MND
Ohio	OH–4,OH–9,OH–10,OH–16
Oklahoma	NOK–1
Oregon	OR–1,OR–2,OR–3,OR–4,NOR–1,MOR
Pennsylvania	PA–1,PA–2,PA–3,PA–4,PA–5,PA–6,PA–7,PA–8,PA–9,PA–10,PA–11,PA–12,PA–13,PA–14,PA–15,PA–16,PA–17,PA–18,PA–19,MPA
Puerto Rico	PR–1,PR–2,MPR
South Carolina	SC–1,SC–6,MSC
South Dakota	SD–1,SD–2,SD–3,NSD–1,MSD
Tennessee	MTN
Texas	TX–9
Utah	UT–1
Virginia	VA–1,VA–2,VA–3,VA–4,VA–5,VA–6,VA–7,VA–8,VA–9,VA–10,VA–11,VA–12,VA–13,MVA
Virgin Islands	VI–1
Wyoming	WY–4,NWY–1,MWY

Date Issued: May 12, 1997.

Stephanie Rorie,

Managing Program Analyst, Office of Program Operations.

[FR Doc. 97–12808 Filed 5–15–97; 8:45 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Notice of Availability of 1997 Competitive Grant Funds for Service Area PA–3 for Delaware County, Pennsylvania

AGENCY: Legal Services Corporation.

ACTION: Correction.

SUMMARY: In a notice published on April 14, 1997 (62 FR 18151), the Legal Services Corporation announced the reopening of competition for 1997 and the solicitation of proposals for the provision of civil legal services for Delaware County, Pennsylvania. The intended grant amount for the remainder of 1997 was erroneously stated as $96,034. The Corporation tentatively plans to award a grant in the amount of $144,047.

FOR FURTHER INFORMATION CONTACT: Carolyn Naidu , Grants Analyst, at (202) 336–8907.

Date Issued: May 12 , 1997.

Stephanie Rorie,

Managing Program Analyst, Office of Program Operations.

[FR Doc. 97–12809 Filed 5–15–97; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–058]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

Copies of patent applications cited are available from the Office of Patent Counsel, Lewis Research Center. Claims are deleted from the patent applications to avoid premature disclosure.

DATES: May 16, 1997.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Attorney, Lewis Research Center, Mail Code 500–118, Cleveland, OH 44135; telephone (216) 433–8855, fax (216) 433–6790.

NASA Case No. LEW–15,793–2: Method and Apparatus for Emissivity Independent Self-Calibrating of a Multiwavelength Pyrometer;

NASA Case No. LEW–16,195–1: PS300—Self Lubricating Readily

Polished High Temperature Composite,
NASA Case No. LEW–16,342–1: Elemental Metals or Oxides Distributed on a Carbon Substrate or Self-Supported and the Manufacturing Process Using Graphite Oxide as Template;
NASA Case No. LEW–16,348–1: A Dynamic Pressure Probe for Static Pressure Measurements in a Gaseous Flow Fields.

Dated: May 2, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–12940 Filed 5–15–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–059]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Space Station Utilization Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act. Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Space Station Utilization Advisory Subcommittee.

DATES: June 23, 1997, 8 a.m. to 5 p.m.; June 24, 1997, 8 a.m. to 5 p.m.; June 25, 1997, 8 a.m. to 5 p.m.; June 26, 1997, 8 a.m. to 5 p.m.; June 27, 1997, 8 a.m. to 11:30 a.m.

ADDRESSES: New England Center, 15 Strafford Avenue, Durham, NH.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond M. Reeves, Code US, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2560.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Advance notice of attendance to the Executive Secretary is requested. The agenda for the meeting will include the following topics:

—Station program update
—Research utilization plans
—Microgravity capabilities and requirements
—External environment
—Telescience requirements and communications capabilities
—Performance metrics
—International partner utilization plans

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 7, 1997.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 97–12941 Filed 5–15–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–060]

Notice of Prospective Copyright License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Copyright License.

SUMMARY: NASA hereby gives notice that Command and Control Technologies, Inc., Titusville, Florida, has applied for an exclusive copyright license for the Computer Software entitled ''Control Monitor Unit (CMU),'' KSC–11830, which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license to Command and Control Technologies, Inc. should be sent to Beth Vrioni, John F. Kennedy Space Center, Mail Code DE–TPO, Kennedy Space Center, FL 32899.

DATES: Responses to this notice must be received on or before July 15, 1997. For further information contact Beth Vrioni at (407) 867–2544.

Dated: May 6, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–12942 Filed 5–15–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–061]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Virginia Power, the primary subsidiary of Dominion Resources Incorporated (DRI), of Glen Allen, Virginia 23060, has applied for an exclusive license to practice the inventions described and claimed in NASA Case Nos. LAR 15348–1, entitled ''THIN-LAYER COMPOSITE-UNIMORPH FERROELECTRIC DRIVER AND SENSOR, 'THUNDER' ''; LAR 15348–2, entitled THIN-LAYER COMPOSITE-UNIMORPH FERROELECTRIC DRIVER AND SENSOR, 'THUNDER' '' and LAR 15138–2 ''A HIGH DISPLACEMENT SOLID STATE PIEZOELECTRIC LOUDSPEAKER'' for which United States Patent Applications were filed by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to NASA Langley Research Center.

DATES: Responses to this notice must be received by July 15, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Robin W. Edwards, Patent Attorney, NASA Langley Research Center, Mail Stop 212, Hampton, VA 23681–0001, telephone (757) 864–9190.

Dated: May 6, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–12943 Filed 5–15–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

Time and Date: 10:00 a.m., Thursday, May 22, 1997.

Place: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

Status: Open.

Board Briefing:

1. Insurance Fund Report.

Matters to be Considered:

1. Approval of Minutes of Previous Open Meeting.
2. Requests from Federal Credit Unions to Convert to a Community Charter.
3. Request from a Corporate Federal Credit Union for a Field of Membership amendment.
4. Request from a Corporate Credit Union to Merge.

Recess: 11:15 a.m.

Time and Date: 11:30 a.m., Thursday, May 22, 1997.

Place: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

Status: Closed.

Matters to be Considered:

1. Approval of Minutes of Previous Closed meeting.

2. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

3. Personnel Action(s). Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–13069 Filed 5–14–97; 2:14 pm]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Scientific Computing; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Scientific Computing (#1185).

Date and Time: June 6, 1997, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1120, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. John Van Rosendale, Program Director, New Technologies Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306-1962.

Purpose of Meeting: To provide recommendations and advice concerning proposals submitted to NSF for financial support.

Agenda: Panel review of the New Technologies Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–12816 Filed 5–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences (#1754).

Date & Time: June 12, 1997 at 8:30 a.m. to 5:00 p.m.; June 13, 1997 at 8:30 a.m. to 3:00 p.m.

Location: Room 390, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. James T. Callahan, Program Director, Division of Environmental Biology, National Science Foundation, 4201 Wilson Blvd., Room 615, Arlington, Virginia 22230 (703) 306–1469.

Purpose of Meeting: To provide advice and recommendations concerning research proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Equipment and Facilities for Research at Biological Field Stations and Marine Laboratories Program as part of the selection process for awards.

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–12820 Filed 5–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemistry (t1191).

Date and Time: June 2, 1997.

Place: Room 1060, NSF, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Joseph Reed, Program Director, Chemical Instrumentation Program, Chemistry Division, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1849.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for the Chemistry Research Instrumentation and Facilities (CRIF) Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–12811 Filed 5–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date & Time: June 9 and June 10, 1997; 8:30 a.m. to 5:00 p.m.

Place: NSF, 4201 Wilson Boulevard, Rooms 320 & 330, Arlington, Virginia.

Contact Person: Drs. Craig Hartley and Sunil Saigal, Program Directors, Mechanics and Materials Programs, Division of Civil and Mechanical Systems, Room 545, NSF, 4201 Wilson Blvd., Arlington, VA 22230 703/306–1361, x 5078 and x 5069.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Mechanics & Materials proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: May 12, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–12818 Filed 5–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act Public Law

92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date & Time: June 12 and June 13, 1997; 8:30 a.m. to 5:00 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530, Arlington, Virginia.

Contact Person: Dr. Devendra P. Garg, Program Director, Dynamic Systems & Control Program, Division of Civil and Mechanical Systems, Room 545, NSF, 4201 Wilson Blvd., Arlington, VA 22230 703/306–1361, x 5068.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Dynamic Systems & Control proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: May 12, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–12819 Filed 5–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meetings

This notice is being published in accord with the Federal Advisory Committee Act (Pub. L. 92–463, as amended). During the period June 1 through June 30, 1997, the Special Emphasis Panel will be holding panel meetings to review and evaluate research proposals. The dates, contact person, and types of proposals are as follows:

Special Emphasis Panel in Electrical and Communications Systems (1196).

1. *Date:* June 6, 1997.

Contact: Dr. Virginia Ayres, Program Director, Physical Foundations of Enabling Technologies (PFET), Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Room 675, Arlington, VA 22230. Telephone: (703) 306–1339.

Type of Proposal: Physical Foundations of Enabling Technologies (PFET).

2. *Date:* June 11, 1997.

Contact: Dr. Rajinder Khosla, Program Director, Physical Foundations of Enabling Technologies (PFET), Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Room 675, Arlington, VA 22230. Telephone: (703) 306–1339.

Type of Proposal: Physical Foundations of Enabling Technologies (PFET).

Times: 8:30 a.m. to 5:00 p.m. each day.

Place: Rooms 360 and 320, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Division as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–12817 Filed 5–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in the Geosciences (1756).

Date and Time: June 4–5, 1997, 9 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 770, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Stephan P. Nelson, Program Director for the Mesoscale Dynamic Meteorology Program; Division of Atmospheric Sciences; Room 775; 4201 Wilson Blvd., Arlington, VA 22230; telephone number (703) 306–1526.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the U.S. Weather Research Program (USWRP) proposals, as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data; and personal information concerning individuals associated with the proposals. These matters are exempted under 5 U.S.C. 552b(c), (4) and (6) of the Government Sunshine Act.

Dated: May 12, 1997.

M. Rebecca Winkler,

Committee Management Office.

[FR Doc. 97–12814 Filed 5–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Notice of Meetings

This notice is being published in accord with the Federal Advisory Committee Act (Pub. L. 92–463, as amended). During the period June 1 through June 30, 1997, the Special Emphasis Panel will be holding panel meetings to review and evaluate research proposals. The dates, contact person, and types of proposals are as follows:

Special Emphasis Panel in Information, Robotics and Intelligent Systems (1200).

1. *Date:* June 2–3, 1997.

Contact: Dr. Maria Zemankova, Deputy Division Director, IRIS, Room 1115, 703–306–1929.

Type of Proposal: Robotics and Machine Intelligence Program Computer Vision.

2. *Date:* June 9–10, 1997.

Contact: Dr. Maria Zemankova, Deputy Division Director, IRIS, Room 1115, 703–306–1929.

Type of Proposal: Robotics and Machine Intelligence Program.

Times: 8:30 a.m. to 5:00 p.m. each day.

Place: Room 1150, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: to review and evaluate proposals submitted to the Division as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–12812 Filed 5–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research #1203.

Dates and Times: June 4, 1997; 7:30 p.m.–11:00 p.m.; June 5, 1997; 8:00 a.m.–5:00 p.m.; June 6, 1997; 8:00 a.m.–5:00 p.m.

Place: Cornell University, Ithaca, NY.

Type of Meeting: Closed.

Contact Person: Dr. Lorretta J. Inglehart, Coordinating Program Director, National Facilities and Instrumentation, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 306–1817.

Purpose of Meeting: To provide advice and recommendations concerning the proposal submitted to NSF for financial support.

Agenda: To review and evaluate a proposal and provide advice and recommendations as part of the review process for proposal submitted to the National Facilities and Instrumentation Program.

Reason for Closing: The activity being evaluated may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b (c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–12815 Filed 5–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208).

Date and Time: June 2–5, 1997 from 8:00 am to 5:00 pm.

Place: Room 375, NSF 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Barry Schneider, Program Director for Atomic, Molecular and Optical Plasma Physics, Division of Physics, Room 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1890.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for the NSF/DOE Partnership in Basic Plasma Science and Engineering as part of the selection process for award.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–12813 Filed 5–15–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: NRC Form 790, ''Classification Record.''

2. Current OMB approval number: 3150–0052.

3. How often the collection is required: On Occasion.

4. Who is required or asked to report: NRC employees, NRC contractors, NRC licensees and others who classify and declassify NRC information.

5. The number of annual respondents: 175.

6. The number of hours needed annually to complete the requirement or request: 147.

7. Abstract: The NRC Form 790 is being revised to add three additional fields and revise several existing fields for easier completion. In addition, an electronic reporting format is being made available for those wishing to use it. Completion of the NRC Form 790 is a mandatory requirement for contractors, license applicants, certificate holders, and others who classify and declassify NRC information in accordance with Executive Order 12958, ''Classified National Security Information,'' the Atomic Energy Act, and implementing directives.

Submit, by July 15, 1997, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 12th day of May, 1997.

For the Nuclear Regulatory Commission.

Arnold E. Levin,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 97–12875 Filed 5–15–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby

informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, extension: Revision
2. The title of the information collection: Application/Permit for Use of the Two White Flint (TWFN) Auditorium
3. The form number if applicable: NRC Form 590
4. How often the collection is required: Each time public use of the auditorium is requested.
5. Who will be required or asked to report: Member of the public requesting use of the NRC Auditorium.
6. An estimate of the number of annual responses: 5
7. The estimate of the number of annual respondents: 5
8. An estimate of the total number of hours needed annually to complete the requirement or request: 1.25 hours (15 minutes per request).
9. An indication of whether Section 3507(d). Public Law 104–13 applies: N/A.
10. Abstract: In accordance with the Public Buildings Act of 1959, an agreement was reached between the Maryland-National Capital Park and Planning Commission (MPPC), the General Services Administration (GSA) and the Nuclear Regulatory Commission, the NRC auditorium will be made available for public use. Public users of the auditorium will be required to complete NRC Form 590, Application/Permit for Use of Two White Flint North (TWFN) Auditorium. The information is needed to allow for administrative and security review, scheduling, and to make a determination that there are no anticipated problems with the requester prior to utilization of the facility.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov(Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, D.C. Area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by June 16, 1997: Edward Michlovich, Office of Information and Regulatory Affairs (3150–0181), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 8th day of May, 1997.

For the Nuclear Regulatory Commission.

Arnold E. Levin,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 97–12873 Filed 5–15–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Boston Edison Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Boston Edison Company (licensee) to withdraw its January 24, 1997, application, as supplemented on February 13 and 27, 1997, for proposed amendment to Facility Operating License No. DPR–35 for the Pilgrim Nuclear Power Station, located in Plymouth County, Massachusetts.

The proposed amendment would have revised the facility Updated Final Safety Analysis Report (UFSAR) pertaining to Reactor Building Response Spectra. The application and supplements requested a revision to the UFSAR to allow an alternative method of deriving seismic inputs for the analysis of piping systems specified in the January 24, 1997, letter.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 12, 1997 (62 FR 11480). However, by letter dated April 9, 1997, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated January 24, 1997, as supplemented on February 13 and 27, 1997, and the licensee's letter dated April 9, 1997, which withdrew the application for license amendment. The above documents 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 Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Dated at Rockville, Maryland, this 9th day of May 1997.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Project Directorate I–3, Division of Reactor Projects—I/II.

[FR Doc. 97–12876 Filed 5–15–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8903]

Homestake Mining Company

AGENCY: Nuclear Regulatory Commission.

ACTION: Amendment of Source Material License SUA–1471 to change reclamation milestone dates.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission has amended Homestake Mining Company's (HMC's) Source Material License for the Grants Mill site in New Mexico to change reclamation milestone dates. This amendment was requested by HMC letter dated December 18, 1996, and its receipt by NRC was noticed in the **Federal Register** on January 22, 1997.

The license amendment modifies License Condition 36 to change the completion dates for site reclamation milestones. The new dates approved by the NRC extend completion of placement of final radon barrier and placement of the final erosion protection on the Large Tailings Pile (LTP) and the Small Tailings Pile (STP). HMC justifies the delays due to incomplete (less than 90%) settlement of the LTP and the existence of groundwater corrective action evaporation ponds on the STP. Based on the review of HMC's submittal, which indicates reclamation will be completed as expeditiously as practicable, and the fact that the added risk to the public health and safety is not significant, the NRC staff considers HMC's request acceptable.

An environmental assessment is not required since this action is categorically excluded under 10 CFR 51.22(c)(11), and an environmental report from the licensee is not required by 10 CFR 51.60(b)(2).

SUPPLEMENTARY INFORMATION: HMC's license, including an amended License Condition 36, and the NRC staff's technical evaluation of the amendment request, are being made available for public inspection at the NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hooks, Uranium Recovery Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone (301) 415–7777.

Dated at Rockville, Maryland, this 8th day of May 1997.

For the U.S. Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–12874 Filed 5–15–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Governmentwide Implementation of the President's Welfare-to-Work Initiative for Federal Grant Programs

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This Notice provides information, in the form of nonbinding questions and answers, to assist the Federal grantmaking agencies, grantees, and subrecipients in responding to the President's Welfare-to-Work Initiative. The Office of Management and Budget worked with the major Federal grantmaking agencies in developing this governmentwide non-regulatory guidance.

FOR FURTHER INFORMATION CONTACT: Barbara F. Kahlow, Office of Federal Financial Management, Office of Management and Budget (telephone 202–395–3053). The text of this Notice is available electronically on the OMB home page at http://www.whitehouse.gov/WH/EOP/omb.

SUPPLEMENTARY INFORMATION: On March 8, 1997, the President issued a memorandum to the heads of the executive departments and agencies entitled ''Government Employment for Welfare Recipients.'' This memorandum directed all Federal agencies to ''hire people off the welfare rolls into available job positions in the Government'' and to submit proposed plans for ''on-the-job training and/or mentoring programs.''

To supplement this initiative, Federal agencies were asked to encourage their grantees and their subrecipients to hire welfare recipients and to provide additional needed training and/or mentoring. This Notice, which the Office of Management and Budget (OMB) developed with the major Federal grantmaking agencies, provides nonbinding questions and answers to assist the Federal grantmaking agencies, grantees, and subrecipients in responding to the President's Welfare-to-Work Initiative. The Federal Government recognizes and appreciates that many grantees and subrecipients have been hiring welfare recipients in meaningful jobs for some time.

The Federal procurement community has a ''Welfare to Work Procurement Information'' link on its Acquisition Reform Network home page (http://www.arnet.gov). Its welfare to work information page links to the White House welfare reform information page (http://www.whitehouse.gov/WH/Welfare), the Department of Labor's welfare to work page (http:/www.doleta.gov/ohrw2w) (which contains welfare recipient recruiting and hiring information), the Social Security Administration's welfare reform information page, the Health Care Financing Administration's welfare reform and Medicaid page, and the Department of Agriculture's food assistance program page.

Additionally, the National Performance Review will be assembling a data base with examples of employer success stories, innovative approaches, and problems encountered by employers which need to be addressed (http://w2w.fed.gov). Employers are requested to provide such examples which can be shared with other employers. Please send such examples to the National Performance Review, 750–17th Street—Suite 200, Washington, DC 20006 or e-mail them to stephen.butterfield@npr.gsa.gov.

As part of this welfare-to-work initiative, OMB does not expect to propose amendments to any Federal laws, governmentwide common rules, or its grants management circulars.

1. *Question*—Is the provision of training for hired welfare recipients an allowable cost under Federal assistance programs?

Answer—Yes. The cost of training provided for employee development is allowable under OMB's cost principles circulars.

2. *Question*—Are supportive services, such as transportation and day care services, for hired welfare recipients allowable costs under Federal assistance programs?

Answer—Yes, to the extent that an organization's internal and established policy permits charging of such costs in a consistent manner. These costs are usually classified as fringe benefit costs and, like salaries and wages, are distributed to all of the organization's activities. In any case, fringe benefits in the form of transit benefits are an allowable cost under Federal grants. Section 132 of the Internal Revenue Code of 1986 allows up to $65 per month to be provided to employees tax free in the form of a ''transit pass,'' or cash if a ''transit pass'' is not readily available, for distribution to employees. This benefit cannot be used in lieu of compensation, but must be paid in addition to any compensation otherwise payable to the employee.

3. *Question*—Are there any available Federal tax credits to employers for hiring welfare recipients?

Answer—Yes. The Work Opportunity Tax Credit (WOTC), authorized by the Small Business Job Protection Act of 1996, is a Federal tax credit that encourages employers to hire certain job seekers and can reduce employer Federal tax liability by as much as $2,100 for each qualified new worker. Welfare recipients who have received Aid to Families with Dependent Children (AFDC) or Temporary Assistance for Needy Families (TANF) assistance for at least a 9-month period, ending during the 9-month period which ends on the hiring date, are eligible for the credit. The existing WOTC expires September 30, 1997, but the Administration has proposed to extend it for one year. The Administration has also proposed an enhancement to the WOTC for long-term welfare recipients that would increase the maximum annual credit to $5,000 (claimable for two years) and allow the costs of employer-provided training, health care, and child care to count as wages for purposes of the credit. The Administration has proposed to authorize the enhanced credit for three years ending September 30, 2000. For more information on claiming the present WOTC credit, employers should call or visit the State employment service office, or call the nearest U.S. Department of Labor Regional WOTC Coordinator.

4. *Question*—What are examples of successful private sector initiatives to hire welfare recipients?

Answer—Eight successful private sector initiatives are described below.

Since 1984, a private for-profit placement and support organization in New York, Indianapolis, Albany and Baltimore has helped more than 12,000 welfare recipients find full-time private sector jobs. Recipients are hired permanently at an average wage of $16,000 per year, including benefits. This organization works under contract with State and local governments and is reimbursed only for successful outcomes, typically defined as a job retained at least six months. The state of New York found that 81 percent of those placed by this organization are still off welfare after one year.

Since 1985, a private non-profit organization in Chicago has followed an incremental ladders-of-work approach, encouraging its participants to begin with work at their level of ability, including, if necessary, volunteer or part-time work. Clients move one step up the ladder of work at a time, with the ultimate goal being full-time, unsubsidized work. The program also provides retention, replacement and advancement services. Since inception, over 850 clients have participated in the program. While 54 percent lose their first job within six months and 75 percent lose their first job within a year, at the end of a 5-year period, 54 percent have worked at least all 12 months of the year either full-time or part-time.

Since 1986, a private non-profit organization in Cleveland, funded by public grants, foundations, and private money, has placed more than 3,000 welfare recipients in full-time jobs, enabling 7,000 men, women, and children to no longer receive welfare benefits. Over 80 percent of the families have not returned to the welfare rolls and have stayed in the workforce, a remarkable result considering that the typical family had been on and off welfare for ten years. The organization provides its clients with 8–10 weeks of general job readiness training and in some cases with basic education and occupation-specific courses. It then matches clients with jobs offered by some 650 local employers, including employer-paid health benefits. Once hired, clients receive transitional services and support from corporate counselors to ensure that they stay employed.

Since 1987, a private non-profit organization in Sarasota, Florida and Lafayette, Louisiana has offered job placement and support services to chronically unemployed members of the surrounding community. In 1996, the organization placed and kept over 500 people in unsubsidized private sector employment; since the program's inception, it has placed a total of more than 1,500 people in jobs. The organization works hard to build relationships with local employers and, after providing its clients with basic job readiness and on-the-job work skills, places people permanently into unsubsidized jobs and offers follow-up support to make sure they stay in jobs.

In 1988, a small private non-profit organization in the Nation's capital was organized for the purposes of preparing and distributing meals to local homeless shelters and transitional homes from surplus food from hotels, restaurants, and catered events. Since 1990, the kitchen has provided a training center for jobless individuals to learn food preparation for employment in the food service industry, while they help prepare over 3000 meals a day. Its 12-weeks training program for 12 participants at a time has graduated 150 participants, with a 60 percent 180-day job retention rate overall and a 75 percent job retention rate in the last year.

In 1990, a major for-profit organization began a pre-employment training program which provides six weeks of training (180 total hours, composed of 60 classroom hours and 120 occupational skills hours, including job shadowing and hands-on practice) for 12–18 participants at a time for employment in the hospitality industry. Over the last six years, the program has had 600 graduates, with a 90 percent graduation rate, a 90 percent retention rate after 90 days, and a 77 percent retention rate after 360 days. After graduates are placed into full-time jobs, the program provides six months of follow-up services to promote job retention. The training program not only teaches skills necessary to obtain a job but also addresses life management factors associated with being able to retain a job, such as maintaining a positive attitude, being dependable and reliable, building confidence and self-esteem, communicating effectively, completing job applications and resumes, grooming and hygiene, and personal issues, such as transportation and day care. A keystone of the program is that trainees do not displace current employees of the organization or cause a reduction in their work hours.

Since mid 1994, a private non-profit organization in Milwaukee has stressed job placement. Clients go through eight weeks of job search. Those who do not find private sector jobs are offered minimum wage community service positions at non-profit organizations for a maximum of one year. When necessary, the organization subsidizes its clients' wages to bring them up to at least the poverty line. It also provides health and child care benefits based on income and helps clients receive the Earned Income Tax Credit (EITC). Preliminary results are very encouraging; 57 percent are currently employed in private or public sector jobs.

In early 1995, a private non-profit organization in Columbus began providing intensive human capital development. Its per person job placement costs are about $2300. Services include six weeks of full-time daily job readiness and skills, academic skills including GED preparation, job development, placement, and follow-up, a $6–$8 per day transportation allowance, and in-house legal counsel. To date, 193 participants have completed the program. Also, to date, 91 recipients were placed in full-time jobs that currently average wages of $6.84 an hour and a 90-day retention rate around 60 percent.

5. *Question*—What are examples of appropriate jobs, requiring minimum on-the-job training, for which welfare recipients could be hired?

Answer—A welfare recipient's job placement should be commensurate with his or her education, skills, and abilities. Thus, a person with the required education, experience or skills for a specific position may be placed in such a position; however, persons without such needed education, experience or skills may be placed in an entry-level position. Several Federal departments have identified appropriate entry-level job positions, including: File clerk, mail and file clerk, office automation clerk, office automation trainee, computer clerk/assistant, claims processing clerk, custodial worker, printing plant worker, laborer, and motor vehicle operator. Generally, employees hired into these positions will be expected to perform such duties as the following: photocopy, receive and deliver mail, file, answer telephones, operate fax machines, maintain and distribute supplies, and clean laboratory equipment in research facilities.

G. Edward DeSeve,

Controller.

[FR Doc. 97–12930 Filed 5–15–97; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26717]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

May 9, 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 declaration(s) should submit their views in writing by June 2, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 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.

New England Electric System, et al. (70–8783)

New England Electric System (''NEES''), a registered holding company, and its nonutility subsidiary company, New England Electric Resources, Inc. (''NEERI'') (together, ''Applicants''), both located at 25 Research Drive, Westborough, Massachusetts 01582, have filed a post-effective amendment to their application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 13(b), 32, and 33 of the Act and rules 45 and 53 thereunder.

By order dated April 15, 1996 (HCAR No. 26504) (''Order''), the Commission authorized NEES and/or NEERI to acquire interests in, finance the acquisition, and hold the securities, of one or more exempt wholesale generators (''EWGs'') and foreign utility companies (''FUCOs'') (together, Exempt Companies''), as those terms are defined respectively in sections 32 and 33 of the Act (''NEES Investments''), either directly or indirectly, through a project entity (''Project Parent''). The Project Parents may issue securities to NEES and/or NEERI and NEES and/or NEERI may acquire the securities. The NEES Investments may take the form of capital stock or shares, debt securities, trust certificates, capital contributions, open account advances and partnership interests or other equity or participation interests, bid bonds or other credit support to secure obligations incurred by NEERI and/or Project Parents in connection with Exempt Company investments or of NEERI's undertaking to contribute equity to a Project Parent. The Order authorized NEES and/or NEERI to make up to $60 million in NEES Investments, provided that the investments would not cause NEES' ''aggregate investment'', as defined in rule 53(a)(i), in EWGs and FUCOs to exceed 50% of the NEES system's ''consolidated retained earnings'', as defined in rule 53(a)(ii).

NEES and NEERI now propose to remove the $60 million limitation on NEES Investments. NEES and NEERI also propose to, from time-to-time through December 31, 1998: (1) Guarantee the indebtedness or other obligations of one or more Exempt Companies; (2) assume the liabilities of one or more Exempt Companies; and/or (3) enter into guarantees and letters of credit reimbursement agreements in support of equity contribution obligations or otherwise in connection with project development activities for one or more Exempt Companies.

As proposed, NEES Investments may be made from NEES to NEERI and/or Project Parents directly or indirectly. Any open account advance made by NEES will be non-interest bearing and shall have a maturity not exceeding one year. Any promissory note issued to NEES by NEERI or a Project Parent, or to NEERI by a Project Parent, and any promissory note or other similar evidence of indebtedness issued by a Project Parent to a person other than NEES or NEERI with respect to which NEES or NEERI may issue a guarantee, would mature not later than 30 years after the date of issuance. It would bear interest at a rate not greater than the prime rate of a bank to be designated by NEES in the case of a promissory note issued to NEES or NEERI. In the case of any note or similar evidence of indebtedness issued to a person other than NEES or NEERI and guaranteed by NEES or NEERI, the rate would not exceed: (a) The greater of 250 basis points above the lending bank's or other recognized prime rate and 50 basis points above the federal funds rate; (b) 400 basis points above the specified London Interbank Offered Rate plus any applicable reserve requirement; or (c) a negotiated fixed rate 500 basis points above the 30 years ''current coupon'' treasury bond rate if such note or other indebtedness in U.S. dollar denominated. If such note or other indebtedness is denominated in the currency of a foreign nation, the interest rate will not exceed a fixed or floating rate which, when adjusted for the prevailing rate of inflation, would be equivalent to a rate on a U.S. dollar denominated borrowing of identical average life that does not exceed 10% over the highest rate set forth above.

NEES may enter into reimbursement agreements with banks to support letters of credit delivered as security for NEES' or NEERI's equity contribution obligation to a Project Parent or otherwise in connection with a Project Parent's or NEERI's Exempt Company project development activities. Any reimbursement agreement supporting a letter of credit would have a term not in excess of 30 years. Drawings under any such letter of credit would bear interest at not more than 5% above the prime rate of the letter of credit bank as in effect from time-to-time, and letter of credit fees would not exceed 1% annually of the face amount of the letter of credit.

DQE, Inc., et al. (70–9027)

DQE, Inc., Cherrington Corporate Center, Suite 100, 500 Cherrington Parkway, Coraopolis, Pennsylvania, 15108–3184 (''DQE''), a public utility holding company exempt under section 3(a)(1) and rule 2 from all provisions of the Act except section 9(a)(2), and its energy services subsidiary, DQE Energy Services, Inc., One North Shore Center, 12 Federal Street, Suite 200, Pittsburgh, Pennsylvania 15212 (''Energy Services'') and Energy Services' subsidiary, DH Energy, Inc., One North Shore Center, 12 Federal Street, Suite 200, Pittsburgh, Pennsylvania 15212 (''DH Energy'') collectively, ''Applicants''), have filed an application under sections under 9(a)(2) and 10 of the Act.

By order dated March 24, 1995 (HCAR No. 26257), Allegheny Development Corporation (''ADC''), an indirect public utility energy services subsidiary of DQE, was authorized to acquire utility assets to provide energy services to the Midfield Terminal Complex at the Greater Pittsburgh International Airport. The energy services provided by ADC are generated by four boilers and seven chillers to provide hot and cold water to the complex and three capacitors

connecting DQE's generating facilities to the airport facilities.

DQE and Energy Services now propose to cause the execution of an Operation and Maintenance Services Agreement (''O&M Agreement'') between ADC and an entity that will be formed as a subsidiary of Energy Services (''Newco''). The term of the O&M Agreement will be 5 years and Newco will receive compensation in the approximate amount of $4.5 million. Under the O&M Agreement, Newco will serve as operator of ADC's electrical and thermal energy facility located at the Midfield Terminal Complex.

On January 22, 1997, ADC entered into: (1) The Heinz Facility Lease (''Lease'') between Heinz USA (''Heinz'') and ADC; and (2) the Energy Supply Agreement (''Supply Agreement''), among Heinz, ADC and Duquesne Energy, Inc., a subsidiary of Energy Services. Both agreements provided for the assignment of all of ADC's rights and obligations to DH Energy. The Applicants now propose to have ADC assign to DH Energy all of ADC's rights and obligations under the two agreements.

The Lease provides, among other things, that DH Energy will lease, operate and maintain an inside the fence energy facility (''Facility'') for Heinz that will provide energy in the form of steam, electricity and compressed air. The Facility has two 3 MV steam turbine generators capable of generating 40 million kilowatt hours of electricity per year and coal/gas fired boilers capable of generating one billion pounds of steam per year. Under the Supply Agreement, DH Energy will be obligated to sell to Heinz electricity and steam produced by the Facility for use in Heinz' manufacturing processes.

Following the consummation of the transactions, the Applicants state that DQE and Energy Services will be exempt public utility holding companies under section 3(a)(1) and rule 2 of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38614; File No. SR–BSE–96–10]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3 and 4 to Proposed Rule Change by the Boston Stock Exchange, Inc., To Amend the Execution Guarantee Rule and BEACON Rule 5

May 12, 1997.

I. Introduction

On December 1, 1997,[1] the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend Chapter II, Section 33, the Execution Guarantee Rule (''Execution Guarantee Rule''), and Chapter XXXIII, Section 5, the Boston Exchange Automated Communication Order-Routing Network (''BEACON System'') Rule (''BEACON Rule 5'').

The proposed rule change, including Amendment Nos. 1 and 2, was published for comment in Securities Exchange Act Release No. 38331 (February 24, 1997), 62 FR 9470 (March 3, 1997). No comment letters were received on the proposal. The Exchange subsequently filed Amendment Nos. 3 and 4 to the proposed rule change on March 26, 1997 and April 7, 1997, respectively.[4]

[1] The Exchange also filed Amendment Nos. 1 and 2 on February 14, 1997 and February 19, 1997, respectively, the substance of which was incorporated into the notice. *See* letters from Karen A. Aluise, Assistant Vice President, BSE, to Michael Walinskas, Senior Special Counsel, Market Regulation, Commission, dated February 10, 1997 (''Amendment No. 1'') and February 13, 1997 (''Amendment No. 2'') respectively.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] Amendment No. 3 amends proposed Interpretation and Policy .05 to the Execution Guarantee Rule to state that an adjustment in price may be allowed if the displayed quotations of the Consolidated Quote System (''CQS'') can be demonstrated to be in error or a market center is experiencing system problems which result in an invalid quotation in CQS. Amendment No. 4 amends proposed Interpretation and Policy .06 to state that specialists can seek relief from the requirements of the Execution Guarantee Rule from two out of three floor officials, and specifies that floor officials include floor members of the Board of Governors and the Market Performance Committee. *See* letters from Karen A. Aluise, Assistant Vice President, BSE, to Michael Walinskas, Senior Special Counsel, Market Regulation, Commission, dated March 20, 1997 (''Amendment No. 3'') and April 4, 1997 (''Amendment No. 4''), respectively.

II. Background and Description

The BSE proposes to amend certain provisions of the Execution Guarantee Rule and BEACON Rule 5. The Execution Guarantee Rule provides customers with primary market price protection on small size orders ranging in size from 100 shares up to and including 1,299 shares, regardless of the displayed bid or offer size in the primary market at the time the order is entered. The proposed rule change deletes the current language of the Execution Guarantee Rule that indicates that the 1,299 share guarantee applies ''regardless of the size of the order.'' The proposed rule change now states that BSE specialists must guarantee execution on all agency market and marketable limit orders from 100 up to and including 1,299 shares.

The proposed rule change also eliminates the 2,500 execution guarantee for most actively traded stocks (''MATS'') from the Execution Guarantee Rule. The proposed rule change moves rule text covering the obligation for filling limit orders from the Interpretations and Policies section to the body of the Execution Guarantee Rule and labels it as paragraph (c). The proposed rule change also renumbers and clarifies the remaining Interpretations and Policies to the Execution Guarantee Rule.

The proposed rule change clarifies proposed Interpretation and Policy .03 of the Execution Guarantee Rule to limit a specialist's obligation for simultaneous orders to the accumulated displayed national best bid and offer (''NBBO'') size. Under proposed Interpretation and Policy .04, the size of limit order executions will be governed by the size displayed on the Consolidated Quote System (''CQS''). Amendment No. 3 amends proposed Interpretation and Policy .05 to state an adjustment in execution price may be allowed (as prescribed in proposed Interpretation and Policy .06) if the displayed quotations of the CQS can be shown to be in error or a market center is experiencing system problems that result in invalid quotations in CQS. Finally, under proposed Interpretation and Policy .06, as amended by Amendment No. 4, specialists can obtain relief from the requirements of the remainder of the Execution Guarantee Rule[5] upon approval from

[5] The Commission notes that the proposed Interpretation and Policy .06 also amends the rule to state that the specialist can now seek relief from the remainder of the entire Execution Guarantee Rule, rather than from just the Interpretations and Policies.

two out of three Floor Officials, rather than the current standard of requiring the approval of two floor members of the Board of Governors or the Market Performance Committee. Floor officials include floor members of the Board of Governors and the Market Performance Committee.[6]

BEACON Rule 5 addresses the function of the BEACON System on the trading floor. The automatic execution function in BEACON aids specialists in the execution of customer orders. The system performs a price check and automatically executes certain qualifying orders without the intervention of a specialist, except for potential price improvement and the fact that the specialist must stop orders that would be outside the primary market price range for the day, under current BEACON Rule 5. The 1,299 share automatic execution parameter in the current BEACON Rule 5 is the same size as the execution guarantee contained in the Execution Guarantee Rule, although higher (2,500 shares) and lower (599 shares) parameters are available in BEACON in certain situations.

Current BEACON Rule 5 contains three automatic execution parameters; 2,500 shares, 1,299 shares (Tier I), and 599 shares (Tier II). The proposed rule change to paragraph (a) of BEACON Rule 5 eliminates all references to Tier I and II stocks, effectively subjecting all the stocks covered by BEACON Rule 5 to the 1,299 automatic execution parameter unless they are specifically exempted under paragraph (b). The proposed rule change to paragraph (b) of BEACON Rule 5, which also eliminates all references to Tier I and Tier II stocks, still allows the specialist to request a 599 automatic execution parameter under certain circumstances. In addition, paragraph (a) still allows specialists to provide automatic execution parameters larger than the 1,299 minimum requirement.

The Exchange has also proposed certain technical changes to BEACON Rule 5. Members will still have access to review the automatic execution parameters, which will be published on the System but will not be published in hard copy anymore, as is currently done. All references to the word ''guarantee'' will be replaced with ''automatic execution parameters'' or ''parameters.'' The proposed rule change also amends paragraphs (c) and (d) of BEACON Rule 5 to eliminate all references to the ''BEACON quotation'' and replaces them with ''BEACON reference price.''

[6] *See* Amendment No. 4.

The proposed rule change to paragraph (c) of BEACON Rule 5 changes the BEACON reference price from the primary market best bid or offer price to the consolidated best bid or offer (''CQ/BBO'') price. All market and marketable limit orders will be filled in their entirety, up to the BEACON Rule 5 automatic execution parameter, regardless of the displayed size of the CQ/BBO. In addition, the proposed rule change to paragraph (c) of BEACON Rule 5 eliminates the last sentence of paragraph (c), which refers to bids and offers superior in price to the BEACON reference price.

The proposed rule change also amends paragraph (d) of BEACON Rule 5 to give specialists discretion to stop orders that would be executed outside the primary market price range for the day, by replacing ''will be 'stopped' '' with ''should be 'stopped'.'' The proposed rule change eliminates both paragraphs (e) (requiring that ''stopped'' orders must be executed by the close of trading) and (f) (stating that principal orders will not be subject to the execution guarantee as defined in this section) of BEACON Rule 5.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[7] Specifically, the Commission believes that the proposed rule change is designed to promote just and equitable principles of trade and 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Accordingly, as discussed below, the rule proposal is consistent with the requirements of Section 6(b)(5) that Exchange rules facilitate transactions in securities while continuing to further investor protection and the public interest.[8]

The Commission believes that the proposed rule change to the Execution Guarantee Rule that deletes the ''regardless of the size of the order'' language from the execution guarantee, thereby stating that the guarantee applies to all agency market and marketable limit orders from 100 up to and including 1,299 shares, is consistent with the Act. The Commission notes that the Exchange has stated that the Execution Guarantee Rule provides customers with primary market price protection on small size orders and that orders over 1,299 shares were not originally intended to receive a partial execution of 1,299 shares, but were to be handled, consistent with best execution obligations, based on prints in the primary market. The Commission believes that this portion of the proposed rule change ensures the protection of investors and the public interest by continuing to require on the BSE an execution guarantee for orders up to 1,299 shares. The Commission notes that for orders greater than 1,299 shares, members must continue to satisfy the applicable best execution obligations, thereby ensuring appropriate handling of such orders.

The Commission believes that the proposed rule change eliminating the MATS 2,500 guarantee from the Execution Guarantee Rule is consistent with the Act. The Commission notes that there is no requirement under the federal securities laws that BSE guarantee a particular level of execution of shares. BSE previously instituted the MATS guarantee in order to compete more effectively for small order business and attract order flow;[9] however, it has now determined that the MATS guarantee is no longer desirable. The Commission believes that the MATS guarantee is not necessary to ensure an acceptable quality of market depth and liquidity on the BSE, particularly since the Execution Guarantee Rule retains a guarantee on all market and marketable limit orders from 100 up to and including 1,299 shares. Moreover, the Commission notes that the specialists' best execution obligations should serve to ensure proper execution of transactions formerly subject to the MATS guarantee.

The Commission believes that the changes to the Interpretations and Policies section of the Execution Guarantee Rule are consistent with the Act because they should facilitate the trading of securities in a free and open market, while continuing to protect investors and serve the public interest. The Commission notes that the original language of Interpretation and Policy .03, regarding simultaneous orders, was adopted prior to electronic order routing and was not designed to address the potentially high volume of today's electronic trading environment. The

[7] 15 U.S.C. 78f(b)(5).

[8] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] *See* Securities Exchange Act Release No. 20029 (August 1, 1983), 48 FR 36043 (August 8, 1983).

Commission believes that when multiple orders are received in a short period of time, particularly in illiquid stocks, it is appropriate to limit a specialist's obligation to the NBBO size. The Commission believes that such a limit will serve to protect the specialist by limiting their exposure, while at the same time continuing to ensure that customers receive the best price that is available in the intermarket system in the stock, up to the accumulated NBBO size.

The Commission notes that proposed Interpretation and Policy .04 of the Execution Guarantee Rule now explicitly addresses limit order size only; the size of limit orders will be governed by the size displayed on the CQS. The proposed rule change restricts this Interpretation and Policy to limit orders because treatment of market order and marketable limit order size is separately addressed in proposed paragraph (a) of the Execution Guarantee Rule.[10] The Commission also notes that the guaranteed price of market orders is governed by the CQS/BBO, under paragraph (b) of the Execution Guarantee Rule, and that marketable limit orders are in effect also governed by the CQS/BBO since they are limit orders whose stated limit price equals the market price when the orders are entered.

Under Amendment No. 3, the Exchange will now be able to adjust the execution price of trades in all situations where another market center is experiencing system problems of any kind that result in an invalid quotation in CQS or if the displayed CQS quotations can be demonstrated to be in error. The Commission notes that this change to proposed Interpretation and Policy .05 is intended to broaden the range of instances when the Exchange can adjust the execution price, and that this change should serve to protect both investors and the specialists by ensuring that the Exchange will have the ability to remedy incorrect prices whenever they occur.

Under the proposed rule change to Interpretation and Policy .06,[11] specialists can now obtain relief from the requirements of the Execution Guarantee Rule upon approval of two out of three Floor Officials, rather than the current standard of two floor members of the Board of Governors or the Market Performance Committee. The Commission notes that Floor Officials include floor members of the Board of Governors and the Market Performance Committee.[12] Under the proposed rule change, specialists would need the approval of two out of the first three floor officials they ask.[13] The Commission believes that this change provides a clear standard that prevents specialists from lobbying numerous floor officials until they find two who agree with their point of view. The Commission also believes that this change should provide a tie-breaker in the instance that two floor officials do not agree with each other.

The Commission believes that the proposed rule change to paragraph (a) of BEACON Rule 5, which eliminates all references to Tier I and II stocks, thereby subjecting all BEACON stocks to a 1,299 automatic execution parameter, is consistent with the Act. The change should aid specialists in the execution of customer orders and help the BEACON System function more efficiently because the standard 1,299 BEACON automatic execution parameter now equals the standard 1,299 execution guarantee. The Commission notes that a specialist may provide a lower (599 shares) or higher execution parameter. The Commission believes that this change to BEACON Rule 5 will continue to adequately serve the needs of investors. Particularly, the standard 1,299 automatic execution parameter provides an adequate measure of depth for automatic executions. Although a specialist can request a lower automatic execution parameter of 599 shares, the Commission notes that the Exchange can only grant such a request upon a showing of good cause. The Commission believes that this change is not substantive because under current BEACON Rule 5 all BEACON stocks are subject to the 1,299 guarantee unless they are exempted and guaranteed a 599 parameter, which is only granted for good cause shown, or are guaranteed a higher 2,500 parameter for stocks identified by specialists. The proposed change eliminates the labels on the different automatic execution parameters but retains the ability of the specialist to request and receive a 599 exemption or to provide a guarantee higher than the 1,299 parameter.[14]

The proposed rule change to paragraph (c) of BEACON Rule 5 changes the BEACON reference price from the primary market best bid or offer to the consolidated market best bid or offer (''BBO''). The Commission notes that the proposed rule change eliminating the last sentence of paragraph (c) of BEACON Rule 5, which refers to bids and offers superior in price to the BEACON reference price, reflects the incorporation of these quotations into the BEACON reference price by the changing of the reference price from the primary market BBO to the consolidated BBO. The Commission believes that this change in the reference price should ensure that investors obtain a better execution price for their trades because specialists would be executing trades at the best price available in the entire intermarket system, instead of merely the primary market price.

The Exchange believes that the proposed rule change to paragraph (d) of BEACON Rule 5, to give specialists discretion to stop orders that would be executed outside the primary market price range for the day, is consistent with the Act. The Commission notes that there is no requirement that the specialist must stop the stock under such circumstances and believes that allowing discretion will not negatively impact on the best execution obligation of the specialist.[15]

The Commission finds good cause to approve Amendment Nos. 3 and 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** As noted above, Amendment No. 3 amends proposed Interpretation and Policy .05 to the Execution Guarantee Rule to state that an adjustment in price may be allowed if the displayed quotations of the CQS can be demonstrated to be in error or a market center is experiencing system problems which result in an invalid quotation in CQS. By broadening the

[10] Under the proposed rule change to the Execution Guarantee Rule, specialists must now guarantee execution on all agency market and marketable limit orders from 100 up to and including 1,299 shares.

[11] *See* Amendment No. 4, supra note 4.

[12] *See* Amendment No. 4, supra note 4.

[13] Phone conversation between Karen A. Aluise, Assistant Vice President, BSE, and Heather Seidel, Attorney, Market Regulation, Commission, on April 4, 1997.

[14] The proposed rule change also makes certain technical changes to BEACON Rule 5. All references to the word ''guarantee'' will be replaced with ''automatic execution parameters'' or ''parameters'' because the Exchange believes that the use of the word ''guarantee'' in regard to the required automatic execution parameter in BEACON Rule 5 has been confusing. The proposed rule change also amends paragraphs (c) and (d) of BEACON Rule 5 to eliminate all references to the ''BEACON quotation'', which the Exchange believes is more closely associated with the specialist's displayed quotation, and replaces them with ''BEACON reference price.''

[15] The Commission notes that the Exchange is eliminating BEACON Rule 5(e) because Chapter II, Section 38(d), the BSE's stopping stock rule, states that all orders stopped pursuant to that section shall be executed by the end of the trading day on which the order was stopped; and that the Exchange is eliminating BEACON Rule 5(f) because BEACON Rule 1(a) states that only agency orders will be eligible for automatic execution in the BEACON System.

range of instances where the Exchange can adjust the execution price, Amendment No. 3 should continue to help protect specialists and investors and the public interest by ensuring that the Exchange has the ability to remedy erroneous prices whenever they occur. Amendment No. 4 amends proposed Interpretation and Policy .06 to the Execution Guarantee Rule to state that a specialist who wants to receive relief from the requirements of the Execution Guarantee Rule must obtain the approval of two out of three floor officials, and specifies that floor officials include floor members of the Board of Governors and the Market Performance Committee. Amendment No. 4 will prohibit ''forum shopping'' among floor officials and will provide a tie-breaker in the situations where two floor officials disagree. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment Nos. 3 and 4 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 3 and 4 to the rule proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–96–10 and should be submitted by June 6, 1997.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–BSE–96–10), including Amendment Nos. 3 and 4, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12890 Filed 5–15–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38607; File No. SR–CBOE–97–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Chicago Board Options Exchange, Incorporated Relating to Minimum Sizes for Closing Transactions, Exercises, and Responses to Requests for Quotes in FLEX Equity Options

May 9, 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 February 21, 1997, the Chicago Board Options Exchange, Incorporated (''CBOE or Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to reduce from 100 contracts to 25 contracts the minimum value size of closing transactions in and exercises of FLEX Equity Options, and to make a comparable reduction in the minimum value size of FLEX Equity Quotes in response to a Request for Quotes.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to reduce from 100 contracts to 25 contracts the minimum value size of closing transactions in an exercises of FLEX Equity Options, and to make a comparable reduction in the minimum value size of FLEX Equity Quotes in response to a Request for Quotes.

The reason for reducing the minimum value size of closing and exercise transactions in FLEX Equity Options is that, based on the Exchange's experience to date with such options, it appears that the existing 100 contract minimums are too large to accommodate the needs of certain firms and their customers.[1] These firms may purchase 100 or more FLEX Equity Options in an opening transactions for a single firm account in which more than one of the firm's clients have an interest. If one of these clients wants to redeem its investment in the account, the firm likely will want to engage in a closing or exercise transaction in order to reduce the account's position in those FLEX Equity Options by the number being redeemed. Currently, Rule 24A.4(a)(4)(iii) imposes a 100 contract minimum on all transactions in FLEX Equity Options unless the transaction is for the entire remaining position in the account. Thus, if the redeeming client's interest is less than 100 FLEX Equity Options and does not represent the total remaining position in the account, Rule 24A.4(a)(4)(iii) as it stands presently, prevents the firm from closing or exercising positions of this size.

The Exchange believes that the proposed rule change to Rule 24A.4(4)(iii) would remedy the situation described above, by permitting an order to close or exercise as few as 25 FLEX Equity Option contracts. The corresponding change to Rule 24A.4(a)(iv), which governs the minimum size for FLEX Equity Quotes that may be entered in response to Request for Quotes, is necessary in order to provide the liquidity needed to facilitate the execution of closing orders between 25 and 99 FLEX Equity Option contracts that would be permitted by the

[1] The Exchange notes that the existing customer base for FLEX Equity Options includes both institutional investors, in particular mutual funds, money managers and insurance companies, and high net work individuals who meet the ''sophisticated investor'' criteria applied to various clients by Exchange member firms. *See* Letter from William J. Barclay, Vice President, Strategic Planning and International Development, CBOE, to Sharon Lawson, Senior Special Counsel, Office of Market Supervision, Division of Market Regulation, Commission, dated April 21, 1997 (''CBOE Letter'').

proposed amendment to Rule 24A.4(4)(iii).

The Exchange notes that the Exchange would issue a circular that (1) Describes the new rule; and (2) reminds all members and member firms of their continued responsibility to insure that FLEX Equity Options are utilized only by sophisticated investors with the necessary financial resources to sustain the possible losses arising from transactions in the requisite FLEX Equity Options class size.[2] The Exchange will submit surveillance procedures for the Commission's review prior to considering this proposal for approval, that will help to ensure that only such sophisticated investors are utilizing this product.

The Exchange believes by providing firms and their customers greater flexibility to trade FLEX Equity options by lowering from 100 to 25 the minimum number of contracts required for a closing transaction, for exercises, and for FLEX Quotes responsive to a Request for Quotes, the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Securities Exchange Act of 1934 by removing impediments to and perfecting the mechanism of a free and open market in securities and otherwise serving to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–97–10 and should be submitted by June 6, 1997.

For the Commission by the Division of Market Regulation, pursuant to the delegated authority.[3]

[FR Doc. 97–12886 Filed 5–15–97; 8:45 am]

BILLING CODE 8010–01–M

[2] *See* CBOE Letter, *supra* note 1.

[3] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38605; File No. SR–CHX–97–7]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to SRO Fees

May 9, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] notice is hereby given that on May 1, 1997, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section (q) of its Membership Dues and Fees Schedule.

Chicago Stock Exchange, Incorporated

Membership Dues and Fees

Additions are *italized;* deletions [bracketed].

(q) Self-Regulatory Organization Fee,[2] $100 per member and member organization per month.

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 CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify the existing exemption from the Exchange's SRO fee. This fee helps recoup costs incurred by the Exchange in performing its self-regulatory function. Specifically, rather than exempting organizations that have no securities transaction revenue, the Exchange proposes to exempt memberships to which a nominee has not been assigned and which are not otherwise being used. In this regard, to qualify for this exemption, the owner of the membership cannot hold itself out as a CHX member to others by virtue of its ownership of that membership and cannot otherwise conduct business on the CHX on the basis of its ownership of that membership. This exemption is applied on a membership by membership basis and not on a member

[2] This fee shall not be applicable to [inactive organizations. An inactive organization is one which has no securities transaction revenue, as determined by annual FOCUS reports, as long as the organization continues to have no such revenue each month] *memberships to which a nominee has not been assigned and which are not otherwise being used.*

by member basis. As a result, if a person or entity owns more than one membership on the CHX, it is possible for that person or entity to qualify for the exemption for one membership (by not having a nominee and not otherwise using the membership), but not qualify for the exemption for another membership owned by that person or entity.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective on May 1, 1997, the date of receipt of this filing by the Commission, pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and paragraph (e) of Rule 19b–4[4] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange.

At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change it if appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. CHX–97–7 and should be submitted by June 6, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12885 Filed 5–15–97; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b-4(e)(1991).

[5] 17 CFR 200.30–3(a)12.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38602; File No. SR–DTC–97–04]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Increase the Size of the Board of Directors

May 9, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 29, 1997, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–97–04) as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend DTC's organization certificate and by-laws to increase the maximum number of directors on DTC's board from fifteen to twenty and to increase the current membership of DTC's board from fifteen to seventeen directors.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, DTC's organization certificate and by-laws provide that DTC's board may consist of from five to fifteen directors. At its March meeting, DTC's board decided that National Securities Clearing Corporation (''NSCC'') President David M. Kelly should join DTC's board and that William F. Jaenike, DTC's Chairman and Chief Executive Officer, should join NSCC's board and sit on that board's executive committee. In order to accommodate the addition of Mr. Kelly and to allow for possible limited future expansion of the board, at DTC's April 1, 1997, board meeting, the board approved an increase in the maximum number of directors from fifteen to twenty and an increase in the current membership of the board from fifteen to seventeen. The seventeenth director is expected to be a banker in order to maintain the balance of DTC board membership between representatives of banks and broker-dealers that has been in existence for many years. DTC has filed a letter application with the New York State Banking Department (''NYSBD'') seeking approval for DTC to amend its organization certificate to allow for a maximum of twenty directors on DTC's board. In addition to filing an application with the NYSBD, DTC will be asking its shareholders to vote to approve the amendments to the organization certificate and the by-laws, to elect individuals to fill the newly created seats on DTC's board, and to approve the certificate of amendment.

DTC believes the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F)[3] of the Act and the rules and regulations thereunder in that the proposal should

[2] The Commission has modified the text of the summaries submitted by DTC.

[3] 15 U.S.C. 78q–1(b)(3)(F).

foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments from DTC participants have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(B)(3)(F) of the Act requires that the rules of a clearing agency must be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.[4] By enabling a representative of NSCC to serve on DTC's board, NSCC and DTC will be better able to coordinate their activities. Such coordination may assist both entities in fulfilling their statutory mandates in a more efficient manner. Thus, the Commission believes that DTC's proposal in consistent with Section 17A(B)(3)(F) of the Act.

DTC requests the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause exists for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing because accelerated approval will permit the new directors to be elected at a shareholder's meeting scheduled for the middle of May.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–97–04 and should be submitted by June 6, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–97–04) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12884 Filed 5–15–97; 8:45 am]

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[4] *Id.*

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38600; International Release No. 1078; File No. SR–DTC–96–13]

Self-Regulatory Organizations; The Depository Trust Company; Order Temporarily Approving a Proposed Rule Change Relating to the Admission of Non-U.S. Entities as Direct Depository Participants

May 9, 1997.

On July 12, 1996, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–DTC–96–13) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') to establish standards for the admission of non-U.S. participants.[1] Notice of the proposal was published in the **Federal Register** on September 12, 1996.[2] On May 5, 1997, DTC filed an amendment to the proposed rule change.[3] No comment letters were received. For the reasons discussed below, the Commission is temporarily approving the proposed rule change through May 31, 1998.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 37652 (September 5, 1996), 61 FR 48187.

[3] Letter from Larry E. Thompson, Senior Vice President and Deputy General Counsel, DTC, (May 5, 1997). This amendment was technical in nature and did not require republication of notice.

I. Description

The rule change amends DTC's current participant admissions policy to permit entities that are organized in a country other than the United States and that are not otherwise subject to U.S. federal or state regulation (''non-U.S. entities'') to be eligible to become direct DTC participants.[4] Under the rule change, DTC will require that the non-U.S. entity execute the standard DTC participants agreement and enter into an additional series of undertakings [5] and agreements that are designed to address jurisdictional concerns, sufficiency of collateral, and to assure that DTC is provided with audited financial information that is acceptable to DTC.[6]

In connection with a non-U.S. firm executing the participants agreement and entering into such undertakings, DTC will require appropriate opinions of counsel, satisfactory to DTC, that state, among other things, that all such undertakings and agreements are legal and enforceable against the non-U.S.

[4] In determining whether to grant access to its services, DTC's 1990 ''Policy Statement on the Admission to Participant's'' (''1990 Policy Statement'') considers whether the applicant is subject to comprehensive U.S. federal or state regulation to be a critical factor. *See* Securities Exchange Act Release No. 28754 (January 8, 1991), 56 FR 1548 (order approving proposed rule change regarding 1990 Policy Statement). Such regulation includes, among other things, capital adequacy, financial reporting and recordkeeping, operating performance, and business conduct of the applicant. Under the 1990 Policy Statement, an applicant not subject to state or federal regulatory oversight generally would not have been eligible to become a participant. However, since 1990 DTC has admitted a small number of non-U.S. entities as participants if their obligations to DTC are guaranteed by participants deemed creditworthy by DTC. In lieu of requiring non-U.S. entities to obtain such guarantees, the rule change establishes admissions criteria that will permit a well-qualified non-U.S. entity to obtain direct access to DTC's services. To the extent that the 1990 Policy Statement is inconsistent with the rule change, the rule change amends the 1990 Policy Statement.

[5] These undertakings and agreements include irrevocably waiving all immunity from DTC's attachment of the non-U.S. entity's assets, submitting to the jurisdiction of a U.S. court, and waiving any objection to venue in a U.S. court. In addition, the non-U.S. entity must designate an agent in New York to receive service of process, provide DTC with all regulatory filings made in the non-U.S. entity's home country, and furnish DTC with all financial reports or other information as requested by DTC, with all fiscal information presented in U.S. dollar equivalents. The additional undertakings and agreements are set forth in DTC's Policy on Admissions of Foreign Entities which is set forth in Exhibit B to DTC's filing and is available for review and copying at the principal office of DTC and the Commission's Public Reference Room.

[6] DTC Rules 2 and 3 set forth the basic standards for the admission of DTC participants. These rules provide, among other things, that the admission of a participant is subject to an applicant's demonstration that it meets reasonable standards of financial responsibility, operational capability, and character at the time of its application and on an ongoing basis thereafter.

entity and will be recognized and given effect under the laws of the United States and the non-U.S. entity's home country as appropriate.

The rule change also requires that the non-U.S. entity (i) Be subject to applicable securities or banking regulation in its home country, (ii) be in good standing with its home country regulator, and (iii) if there is a central securities depository established in the non-U.S. entity's home country, be eligible to become a member of that depository. Additionally, the rule change requires that the home country regulator of the non-U.S. entity have entered into a memorandum of undertaking with the Commission to share or exchange information.

The rule change sets forth special financial conditions for non-U.S. entities. The central purpose of these special financial conditions is to compensate for the fact that U.S. authorities have limited oversight of non-U.S. entities and that these entities are subject to regulatory oversight and requirements that are different from those of U.S. entities. As such, information concerning financial difficulties or the impending insolvency of non-U.S. entities may not be available to DTC as such information is for U.S. entities.[7]

Under the special financial conditions, non-U.S. entities will be required to have and to maintain excess net capital equal to US$5,000,000 if the entity is a broker-dealer and US$20,000,000 if the entity is a bank.[8] In addition to the standard deposit requirements applicable to all DTC participants, non-U.S. entities also will be required to deposit with or pledge to DTC ''special collateral'' with a value after imposing specified haircuts equal to 50 percent of the entity's net debit cap.[9] Except for U.S. Treasury securities, securities included in the special collateral account will receive a haircut of 50 percent.[10] In addition, the non-U.S. entity will not receive credit for the special collateral in DTC's collateral monitor. Any net debit must be supported by the value of collateral other than the special collateral. Such special collateral requirements are designed to help assure that DTC will not suffer a loss even if the non-U.S. entity fails to settle and the market value of the collateral supporting its net debit declines.

II. Discussion

Section 17A [11] of the Act, among other things, requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the rule change is consistent with DTC's obligations under this section. Specifically, by requiring non-U.S. applicants to execute the standard participants agreement, enter into additional undertakings with DTC, and provide DTC with opinions of counsel as to these matters, the rule change should serve to bind non-U.S. entities to DTC's rules and procedures in a manner similar to U.S. domestic participants. Additionally, the participants agreement and undertakings, as supported by the opinions of counsel, should lessen or eliminate the negative effects that jurisdictional issues could have on DTC's exercise of its rights and remedies against a non-U.S. entity if such entity fails to settle.

To further protect DTC and its participants from the potential risks posed by non-U.S. participants, the rule change limits direct participation in DTC to those non-U.S. entities that are operationally capable and well-capitalized. The rule change imposes substantial capital requirements on non-U.S. entities. Moreover, because each non-U.S. entity must maintain special collateral having a value equal to 50 percent of its net debit cap after haircuts and will not receive credit for such special collateral in its collateral monitor, the rule change should protect DTC and its participants against a firm's failure to settle even if there is a significant drop in the value of the collateral supporting a firm's settlement activities.

Accordingly, the Commission believes that by requiring non-U.S. entities to (i) Execute the standard DTC participants agreement and abide by DTC's rules and procedures, (ii) enter into the additional undertakings, (iii) provide DTC with opinions of counsel regarding the foregoing, and (iv) be subject to the special financial conditions, the rule change should assist DTC in assuring the safeguards of securities and funds which are in its custody, control, or for which it is responsible.

The Commission is temporarily approving the proposed rule change through May 31, 1998, so that DTC can gain experience with its new admissions standards for non-U.S. entities and the unique risks posed by the settlement activities of these firms as direct DTC participants. Temporary approval also should offer both the Commission and DTC an opportunity to observe whether the admissions criteria, procedures, and additional capital and collateralization requirements applicable to non-U.S. entities adequately protect DTC and its participants, and whether any adjustments are necessary. During the temporary approval period, DTC will be expected to monitor the adequacy and soundness of the rule change as necessary in order to protect securities and funds.

III. Conclusion

On the basis of the foregoing the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–96–13) be and hereby is approved on a temporary basis through May 31, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12887 Filed 5–15–97; 8:45 am]

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[7] Rule 17a–11 (17 CFR 240.17a–11) under the Act requires broker-dealers to give notice to the Commission and to the broker-dealers' designated examining authority when, among other things, the broker-dealers' net capital (i) declines below the minimum amount required by Rule 15c3–1 (17 CFR 240.15c3–1) under the Act or (ii) is less than 120% of the broker-dealer's required minimum net capital.

[8] DTC's notice of the proposed rule change provided that non-U.S. entities would be required to have and to maintain 1000% of the excess net capital (for broker-dealers) or the minimum equity (for banks) required of U.S. participants. Under the rule change as originally proposed, the minimum capital requirements for non-U.S. broker-dealers and banks would have been US$5,000,000 and US$20,000,000, respectively. To avoid confusion, DTC amended the proposed rule change to require that non-U.S. entities have and maintain excess net capital of US$5,000,000 if a broker-dealer and minimum equity of US$20,000,000 if a bank instead of basing its capital standards for non-U.S. entities on a multiple of the minimum capital requirements of U.S. broker-dealers and banks.

[9] DTC will require non-U.S. participants to deposit all necessary collateral with DTC before such participants are permitted to create a net debit in DTC's settlement system.

[10] Non-U.S. entities can pledge only DTC-eligible securities as special collateral. Securities for which the non-U.S. entity is the sole or a principal market maker are not acceptable as special collateral.

[11] 15 U.S.C. 78q–1.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38592; File No. SR–GSCC–96–14]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change to Eliminate Grandfather Privileges

May 9, 1997.

On December 19, 1996, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–GSCC–96–14) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on February 25, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Effective June 30, 1997, the proposed rule change eliminates the list of grandfather non-members. GSCC established the grandfather list in May 1993, when GSCC created category 1 IDBs and category 2 interdealer broker netting members (''IDB'') and placed limitations on their trading activity with firms that were not members of GSCC's netting system.[3] GSCC restricted category 1 IDBs to trading only with GSCC netting members and limited to ten percent the trading activity of category 2 IDBs with nonmember firms.

At that time, GSCC decided to allow IDBs to continue to trade with certain nonmember firms (''grandfather nonmembers'') that historically have had access to the IDB's screens and that GSCC has identified on its grandfather list.[4] Accordingly, category 1 IDBs would continue to trade with the grandfather nonmembers and trades between category 2 IDBs and grandfathered firms did not count toward category 2 IDBs' ten percent limit.

Currently, all grandfather nonmembers are eligible for GSCC membership or could have their trades submitted to GSCC's netting system through an affiliated netting member. The proposed rule change eliminates the grandfather list. As a result, category 2 IDBs, which do virtually all of the brokered transactions with the current grandfathered nonmembers, will have to trade with the formerly grandfathered firms that do not join GSCC's netting system under the category 2 IDB's authority to engage in ten percent of its trading activity with nonmember firms. Category 1 IDBs will be prohibited from doing any netting eligible activity with a formerly grandfathered firm that does not join GSCC's netting system.

II. Discussion

Section 17A(b)(3)(F)[5] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that GSCC's proposed rule change is consistent with GSCC's obligations under the Act because eliminating the grandfather list ends the additional exposure to GSCC that the trading by the IDBs with grandfather nonmembers creates.

Specifically, these trades expose GSCC to greater risks than trades between an IDB and a netting member because trades with a grandfather nonmember are not eligible for netting by GSCC. As a result, when an IDB has offsetting trades with a netting member and with a grandfather nonmember, only the trade with the netting member will be netted thereby leaving the IDB instead of a grandfathered firm with a position. The traditional role of IDBs is to net out of every transaction. GSCC's system reflects this role. (For example, IDBs have lower net capital requirements.) As a result, an IDB with a position presents a greater risk to GSCC. By reducing the risks to GSCC, the proposed rule change enables GSCC to better assure the safeguarding of securities and funds which are in its custody or control.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–96–14) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12825 Filed 5–15–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38603; File No. SR–GSCC–96–12]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Interdealer Broker Repurchase Agreement Transactions

May 9, 1997.

On November 21, 1996, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–GSCC–96–12) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On December 3, 1996, GSCC filed with the Commission an amendment to the proposed rule change. Notice of the proposal was published in the **Federal Register** on February 20, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Generally, interdealer brokered (''IDB'') submit data to GSCC on corresponding repo transactions entered into with two non-IDB counterparties with the intent of maintaining a flat position (*i.e.*, the IDB's deliver obligations are equal to its receive obligations). Thus, the IDB does not have margin or clearing fund consequences from the trades at GSCC. However, when one non-IDB counterparty fails to submit in a timely or accurate fashion data related to the transaction, the IDB's trade with the non-submitting counterparty will not compare and will not enter GSCC's

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38302 (February 18, 1997), 62 FR 8475.

[3] Securities Exchange Act Release No. 32722 (August 5, 1993), 58 FR 42993 (order approving establishment of new membership categories).

[4] The grandfather list includes the following firms:

Aubrey G. Lanston & Co., Inc.
The Nikko Securities Co., Ltd. (Tokyo)
Nikko Europe PLC (London)
Nomura International Inc. (Tokyo)
Nomura Securities Co., Ltd. (Tokyo)
Nomura International PLC (London)
Daiwa Europe Ltd. (London)

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38287 (February 13, 1997), 62 FR 8068.

netting system. If the corresponding repo submission compares and enters the net, the IDB will have a net settlement position and may incur clearing fund and funds-only settlement assessments.[3]

The proposed rule change amends Rule 19, which sets forth special provisions for brokers repo transactions, by adding Section 3. Section 3 reaffirms the obligation of a non-IDB netting member to submit in a timely and accurate manner to GSCC or to another registered or exempted clearing agency data on all of its brokered repo transactions.[4] Section 3 also provides that if a non-IDB member fails without good cause to submit data on a brokered repo transaction in a timely or accurate manner, GSCC may treat the transaction as compared based on the data submission received from the counterparty IDB for purposes of assessing clearing fund deposits and funds-only settlement payments. Prior to GSCC's assessing clearing fund and funds-only settlement consequence to a non-IDB netting member that has failed to submit such trade data in a timely and accurate manner, GSCC would attempt to contact (*e.g.*, by telephone) as promptly as possible such non-IDB netting member in order to confirm the accuracy of the data submitted by its IDB netting member counterparty. If the lack of comparison arose because of operational or other problems on the part of the IDB party and the non-IDB netting member therefore does not know the trade, GSCC would not assess margin consequences against the non-IDB netting member.

II. Discussion

Section 17A(b)(3)(F)[5] of the Act provides that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible. Without this amendment, a non-IDB that has failed to submit trade data as required by GSCC rules would not be required to pay the related clearing fund and funds-only settlement obligations. Instead, these obligations would fall upon the IDB. Because of their traditional role, IDBs tend to have fewer financial resources to pay these obligations. The amendment is an effort to place the financial obligations associated with a trade on the proper party. By collecting funds from the party that represents the real settlement risk (*i.e.*, the non-IDB party), the proposal helps to safeguard the securities and funds in the custody or control of GSCC.

In addition, without this proposal, non-IDBs do not have an incentive to submit data in a timely fashion because failure to submit data results in clearing fund and funds-only settlement obligations not being assessed to them. By ensuring that the non-IDBs will be required to collateralize their risks whether or not they submit data, the amendment removes any incentive to fail to fulfill data submission obligations. Thus, the proposal promotes the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder. *It is therefore ordered,* pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–96–12) be, and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegate authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12883 Filed 5–15–97; 8:45 am]

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[3] The funds-only settlement assessment is designed to collateralize a member's net cash payment obligations to GSCC.

[4] GSCC rules currently require that repo netting members submit in a timely manner data on all eligible repo transactions either to GSCC or to another registered clearing agency or a clearing agency that has been exempted from registration as a clearing agency by the Commission. Currently, only one other registered clearing agency, Delta Clearing Corp., clears and settles repo transactions in government securities. Typically, dealers enter into a brokered transaction with the understanding that such trade will be cleared and settled through a specified clearing agency. Therefore, if the counterparties to a repo transaction have selected GSCC as the clearing agency to be used, failure to submit the relevant data may be a violation of GSCC's rules.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38601; File No. SR–GSCC–97–01]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Regarding Off-The-Market Transactions

May 9, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] notice is hereby given that on March 11, 1997, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to GSCC's rules to allow the mitigation of risk arising from the netting and guaranteed settlement of off-the-market transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC's fulfillment of its basic mission, which is to ensure that the overall settlement process for the Government securities industry never fails, has been based on the belief that it is best to be as inclusive as possible with regard to the transactions entered into by its members. This makes it less likely that the failure of an industry participant will have a chain reaction effect and lead to the failure of other participants and the settlement process in general.

Because of this philosophy, GSCC has avoided to the extent possible establishing barriers to the inclusion of members' trades in the netting process. Thus, absent the potential for a member to fail to fulfill its settlement obligations to GSCC and have GSCC cease to act for it, GSCC's rules do not provide for limitations on a member's ability to submit trading activity based on its financial status or its level of overall

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of these summaries.

activity. Rather, GSCC's approach has been to let its margining processes be the natural limit on a member's level of trading.

This approach works well because the clearing fund and forward margining processes are both dynamic ones. They are not set or capped at a specific level but are recalculated and collected daily and thus, increase or decrease daily based on (1) the level of members' overall historical and current day's net activity with respect to clearing fund and (2) the net profitability of members' overall net activity with respect to forward margin.

This inclusive approach to netting eligibility has led GSCC to allow trades into its net that have a price that differs significantly from the prevailing market price for the underlying security (''off-the-market transactions''). The large majority of the off-the-market transactions that enter the net are not independent trades per se but rather reflect exercise of options into which the parties previously entered. GSCC continuously monitors its receipt of data on off-the-market transactions. For monitoring purposes, GSCC considers trades that are greater than $1 million in value and that traded at a price that is more than one percentage point away from GSCC's system price as off-the-market trades.

The submission by netting members to GSCC of data on an off-the-market transaction is of particular concern if done on the day before the scheduled settlement date of the transaction or if the data is submitted earlier than on the day before scheduled settlement date but is not compared until that date because it presents GSCC with exposure that it has not had the opportunity to appropriately assess and margin. As noted above, most of the off-the-market transactions submitted to GSCC are options exercises, and ordinarily, an option is settled on the business day after the day on which it is exercised.

As a partial solution to this problem, GSCC intends in the future to provide a comprehensive set of comparison, netting, settlement, and risk management services for options on Government securities. As a more immediate measure, GSCC is seeking authority to take the following two-pronged approach to the problem of off-the-market transactions.

1. *Continue to allow off-the-market trades into the net thus keeping them eligible for netting, novation, and guaranteed settlement but change the loss allocation process so as to allocate all of any loss resulting from the liquidation of the off-the-market transaction to the remaining counterparty.*

This approach recognizes that allowing off-the market transactions into the net has the potential to inappropriately increase the loss that GSCC would incur should a member that has engaged in such transactions fail and have its net settlement positions liquidated. Members not involved in the off-the-market transaction should not have to share in the loss allocation that results from its liquidation.

To avoid this, GSCC is seeking the authority to amend its rules to allocate the loss arising from an off-the-market transaction done either with a netting member that subsequently is determined to be insolvent or with an executing firm that the insolvent member acts for as a submitting member directly and entirely to the insolvent member's counterparty.

2. *Not pass through to the credit side the mark-to-market amount associated with an off-the-market transaction until and unless it is paid to GSCC by the debit side.*

The revision to the loss allocation process addresses the inequity of how that process applies to a failed member that has engaged in off-the-market transactions. However, it would expose GSCC to the risk that the failed member's counterparty also defaults on its settlement obligations to GSCC after that member has received the benefit of the off-the-market transaction through the funds-settlement process. If that happens, then the allocation of loss still effectively reverts back to the other members that were not involved in the off-the-market transaction.

Thus, as a complement to the first proposed, GSCC is seeking the ability to ensure that the mark-to-market exposure on the off-the-market transaction not be inappropriately passed through to a failed member's counterparty. GSCC would do this by amending its rules and its operational procedures to provide that if the mark-to-market amount associated with an off-the-market transaction is not paid to GSCC by the debit side on the morning of the business day following the submission of the trade (*i.e.*, the debit side fails before it has satisfied its funds settlement obligation), the market amount will not be paid by GSCC to the credit side. In other words, GSCC will not pass through the profit on an off-the-market transaction until and unless it has received that profit amount.

GSCC is proposing as the definition of an off-the-market transaction any of the following:

(1) An options exercise.

(2) A single transaction that is:

(i) greater than $1 million in par value and

(ii) either one percentage point higher than the highest price or one percentage point lower than the lowest price for the underlying security on the day of the submission of data on the transaction to GSCC (with such prices being obtained by GSCC from a third-party source such as Bloomberg Financial Services selected by GSCC for this purpose).

(3) A pattern of transactions submitted by two members that if looked at as a single transaction would constitute an off-the-market transaction.

The proposed rule changes are consistent with the requirements of Section 17A of the Act [3] and the rules and regulations thereunder because it would ensure that the mark-to-market exposure on the off-the-market transaction not be inappropriately passed through to a failed member's counterparty and that the liquidation of an off-the-market transaction not lead to a significant loss by GSCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. Members will be notified of the rule change filing and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations consents, the Commission will:

(A) by order approve rule proposed such change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

[3] 15 U.S.C. 78q–1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of this submission, all subsequent amendments, all written statements with respects 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 provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to the File No. SR–GSCC–97–01 and should be submitted by June 6, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12893 Filed 5–15–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38595; File No. SR–MBSCC–96–08]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Approving a Proposed Rule Change Relating to Liens on Participants' Property

May 9, 1997.

On November 20, 1996, MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–MBSCC–96–08) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] to explicitly state that MBSCC has a lien on all property placed in its possession by its participants. On January 3, 1997, and on January 14, 1997, MBSCC filed amendments to the proposed rule change. Notice of the proposal was published in the **Federal Register** on February 26, 1997.[2] On April 10, 1997, MBSCC again amended the proposed rule change.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Unlike other clearing agencies, MBSCC's rules did not contain specific language stating that MBSCC has a lien on all property placed into its possession by its participants.[4]

However, MBSCC has stated that it always intended to have such a lien. The proposed rule change modifies MBSCC's rules to explicitly state that MBSCC has a lien on all property placed in its possession by its participants.

The proposed rule change also revises MBSCC's rules to clarify that any cash received with respect to deposits to MBSCC's participants fund from and not yet distributed to a participant is available to MBSCC for satisfaction of participant liabilities.

II. Discussion

Section 17A(b)(3)(F) [5] of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with MBSCC's obligations under the Act because the proposed rule change adds language providing MBSCC with assurances that, in the event one of its participants fails to discharge its liabilities, MBSCC will have a lien on the participant's property in MBSCC's possession. Therefore, MBSCC can utilize the participant's cash or securities subject to the lien to cover the participant's unpaid obligations to MBSCC. As a result, MBSCC is in a better position to protect itself and its participants from a defaulting participant.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MBSCC–96–08) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12826 Filed 5–15–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38594; File No. SR–MCC–97–01]

Self-Regulatory Organizations; Midwest Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Return of Sponsored Account Fund Deposits

May 9, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 27, 1997, Midwest Clearing Corporation, (''MCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by MCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to adopt a form of indemnity agreement in accordance with Article XI, Rule 2, Section 11 of MCC's rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MCC has prepared summaries, set forth in sections A, B,

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38314 (February 19, 1997), 62 FR 8809.

[3] The amendment was technical in nature and therefore did not require republication of the notice.

[4] For example, the rules of the National Securities Clearing Corporation (''NSCC'') and the International Securities Clearing Corporation (''ISCC'') provide NSCC and ISCC with liens on property placed in their possession by their participants. The language contained in the present proposed rule change is substantially similar to the language contained in NSCC's and ISCC's respective rules. NSCC Rule 18, Section 2(f) and ISCC Rule 18, Section 3.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On January 5, 1996, the Commission approved a proposed rule change filed by MCC relating to its withdrawal from the securities clearance and settlement business in conjunction with an agreement with the National Securities Clearing Corporation (''NSCC'').[3] Under the agreement, MCC became an NSCC member and agreed to sponsor at NSCC certain floor members and member organizations (''sponsored participants'') of MCC's parent corporation, the Chicago Stock Exchange (''CHX''). The purpose of sponsoring participants was to provide specialists, market makers, and floor brokers of CHX that are not members of a registered clearing agency (other than MCC) with access to the services of a registered clearing agency. As of January 21, 1997, MCC had 33 sponsored participants.

To reduce MCC's exposure to the sponsored participant's trading activity, Article XI, Rule 11 of MCC's rules require sponsored participants to contribute to a sponsored account fund. All contributions to the sponsored account fund must be in cash. If MCC ceases to act on behalf of a sponsored participant for any reason, Article XI, Rule 11(h) and Article IX, Rule 2, Section 11 of MCC's rules permit MCC to retain the sponsored participant's sponsored account fund deposit until the sponsored participant satisfies certain requirements.[4] A sponsored participant may choose the method by which to protect MCC from potential losses. One method is by entering into a form of indemnity agreement acceptable to MCC.

The purpose of the proposed rule change is to adopt an acceptable form of indemnity agreement.[5] Under the form of indemnity agreement, a sponsored participant agrees to indemnify and hold MCC and its officers, directors, and certain other personnel harmless from any loss (including attorneys' fees) caused by the sponsored participant. The sponsored participant also agrees to indemnify MCC, its officers, and certain other personnel for other losses that could be charged against the sponsored account fund generally to the same, or in certain cases, a lesser extent, than if the sponsored participant had not received its deposit back.

Pursuant to the form of indemnity agreement, the amount owing for these other losses (i) Will not exceed the amount the sponsored participant had on deposit at the time of the sponsored participant's withdrawal from MCC and (ii) will not be applicable if the underlying conduct giving rise to the loss occurred after the withdrawal. In addition, the indemnity will cease in its entirety after four years from the date the indemnity is signed.

While MCC believes that the form of indemnity agreement will be deemed satisfactory in many cases, MCC still reserves the right to require, in its discretion, additional indemnities and guarantees above and beyond the form of indemnity agreement or to decline to accept any indemnity agreement or guarantee in lieu of retaining sponsored account fund deposits. This may be necessary, for example, if the withdrawing sponsored participant is on the verge of bankruptcy or insolvency.

MCC believes that the proposed rule change is consistent with Section 17A(b)(3)(f)[6] of the Act in that it will facilitate the prompt and accurate clearance and settlement of securities transactions and will assure the safeguarding of securities and funds which are in MCC's custody or control or for which MCC is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

MCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on comments on the Proposed Rule Change Received From Members, Participants or Others

MCC has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i)[7] of the Act and pursuant to Rule 19b–4(e)(1)[8] promulgated thereunder because the proposal constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of MCC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of MCC. All submissions should

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[2] The Commission has modified the text of the summaries prepared by MCC.

[3] For a description of the agreement, refer to Securities Exchange Act Release No. 36684 (January 5, 1996), [File No. SR–MCC–95–04] (order approving proposed rule change).

[4] Article XI, Rule 11(h) states that the return of sponsored account fund deposits is governed by Article IX, Rule 2, Section 11. Generally, Article IX, Rule 2, Section 11 provides that whenever a sponsored participant ceases to be a participant, the amount of its contribution to the sponsored account fund must be returned to it ninety days after:

(i) All transactions open at the time it ceases to be a sponsored participant from which losses or payments chargeable to the sponsored participants fund might result have been closed,

(ii) All obligations, contingent or otherwise, that are chargeable or may become chargeable against its contributions pursuant to MCC's rules have been satisfied or, at the discretion of MCC, have been deducted, and

(iii) Either another sponsored participant has been substituted, with the approval of MCC, on all transactions and obligations of the sponsored participant, or the participant has presented to MCC such indemnities or guarantees as MCC deems satisfactory.

If the sponsored participant does not satisfy all the requirements set forth in paragraph (iii) above, MCC may retain for up to four years, the greater of:

(a) 25 percent of a sponsored participant's average sponsored account fund requirement over the twelve months immediately prior to the date the sponsored participant ceases to be such, or

(b) $100,000 (or the Participant's entire Participants Fund deposit if the actual deposit is less than $100,000).

[5] A copy of the form agreement is attached as Exhibit A to MCC's proposed rule change which is available for inspection and copying at the Commission's Public Reference Room or through MCC.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(e)(1).

refer to File No. SR–MCC–97–01 and should be submitted by June 6, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12827 Filed 5–15–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38611; File No. SR–NASD–97–30]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Amendment to the NASD's Rule Governing the Eligibility of Members To Become Primary Market Makers in Issues Subject to a Secondary Offering

May 12, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), and the National Association of Securities Dealers, Inc.'s (''NASD'' or ''Association'') Plan of Allocation and Delegation of Functions by NASD to Subsidiaries, notice is hereby given that on April 24, 1997,[1] the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 4612(g) to permit a member who is a manager or co-manager of a secondary offering to be eligible to become a Primary Nasdaq Market Maker (''PMM'') in that issue prior to the effective date of the secondary offering regardless of whether the member was a registered market maker in the stock before the announcement of the secondary offering. The proposed amendment to Rule 4612(g) would only apply to members that are a PMM in 80% or more of the securities in which they are registered. (Additions are italicized.)

* * * * *

NASD Rule 4612

(a)–(g) (1) No change.

(g)(2) Notwithstanding paragraph (g)(1) above, after an offering in a stock has been publicly announced or a registration statement has been filed, no market maker may register in the stock as a Primary Nasdaq Market Maker unless it meets the requirements set forth below:

(A) For secondary offerings:

(i) The secondary offering has become effective and the market maker has satisfied the qualification criteria in the time period between registering in the security and the offering become effective; *provided, however, that if the member is a manager or co-manager of the underwriting syndicate for the secondary offering and it is a PMM in 80% or more of the Nasdaq National Market securities in which it is registered, the member is eligible to become a PMM in the issue prior to the effective date of the secondary offering regardless of whether the member was a registered market maker in the stock before the announcement of the secondary offering;* or

(ii) The market maker has satisfied the qualification criteria for 40 calendar days.

(g)(2)(B)–(h) No change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Presently, NASD Rule 4612(g)(2)(A) provides that unless a market maker is registered in a security prior to the time a secondary offering in that stock has been publicly announced or a registration statement has beef filed, it cannot become a Primary Market Maker (''PMM'') in the stock unless: (1) The secondary offering has become effective and the market maker has satisfied the PMM standards between the time the market maker registered in the security and the time the offering became effective or (2) the market maker has satisfied the PMM standards for 40 calendar days (''Secondary Offering PMM Delay Rule'').[2] This aspect of the PMM standards, which is unaffected by the waiver, until October 1, 1997, of the four quantitative PMM standards contained in NASD Rule 4612 (a) and (b), was first adopted because the time period after secondary offerings have been announced is sensitive to short selling pressure. Specifically, in these situations, the stock of the issuer is currently being traded and the ''overhang'' on the market of the new stock coming into the market from the offering makes the security particularly susceptible to manipulative short selling. The result of such short selling can adversely impact the capitalization of the issuer, particularly smaller issuers, whose securities often have less liquid secondary markets. Thus, Nasdaq has been and continues to be concerned with dealers entering the market after secondary offerings have been announced in order to take advantage of the market maker exemption from the short sale rule.

There have been instances where managers and co-managers of secondary offerings that have not previously been registered in the issue have been precluded from becoming a PMM in the issue prior to the effective date of the secondary offering, however. Accordingly, because of the inherent commitment of managers and co-managers to the issues that they underwrite as well as the additional liquidity that these members can provide, Nasdaq believes it would be appropriate for managers and co-

[9] 17 CFR 200.30–3(a)(12).

[1] The NASD filed an amendment (''Amendment No. 1'') clarifying footnote 3 to say that a firm is not precluded from being a manager or co-manager of a secondary offering if it is not a PMM in 80% or more of the stocks in which it makes a market. *See* Letter from Thomas R. Gira, Associate General Counsel, the Nasdaq Stock Market, Inc., to Katherine England, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated May 7, 1997.

[2] The PMM standards are used to determine the eligibility of market makers to an exemption from the NASD's short-sale rule. Previously, a market maker was required to satisfy at least two of the following four quantitative standards to be a PMM: (1) The market maker must be at the best bid or best offer as shown on Nasdaq no less than 35 percent of the time; (2) the market maker must maintain a spread no greater than 102 percent of the average dealer spread; (3) no more than 50 percent of the market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading; or (4) the market maker executes 1½ times its ''proportionate'' volume in the stock. *See* NASD Rule 4612 (a) and (b). Because of changes to market maker quotation and trading activity since implementation of the SEC's Order Handling Rules, the Commission approved an NASD proposal to waive the PMM standards until October 1, 1997, to afford Nasdaq an opportunity to develop new PMM standards. *See* Securities Exchange Act Release No. 38294 (February 14, 1997), 62 FR 8289.

managers of secondary offerings to be eligible to register as PMMs in such issues before the secondary offering is effective. The proposed amendment to Rule 4612(g) would only apply to members that are a PMM in 80% or more of the securities in which they are registered, however

Nasdaq believes the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Specifically, by permitting managers and co-managers of secondary offerings who did not previously make a market in such issues to become PMMs in such issues prior to the effective date of the secondary offering, Nasdaq believes the proposed rule change will enhance market liquidity, facilitate greater competition among market makers, and promote the capital formation process. At the same time, given the inherent commitment of managers and co-managers to the stocks they underwrite, along with the requirement that such firms be a PMM in 80% or more of stocks in which they are registered under the proposal,[3] Nasdaq does not believe the proposal will compromise the regulatory purposes underlying the ''Secondary Offering PMM Delay Rule.''

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

[3] Of course, a firm is not precluded from being a manager or co-manager of a secondary offering if it is not a PMM in 80% or more of the stocks in which it makes a market.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–97–30 and should be submitted by June 6, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. (17 CFR 200.30–3(a)(1) (1989)).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12888 Filed 5–15–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38610; File No. SR–NASD–97–31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to an Amendment to the NASD's Rule Governing Market Maker Registration

May 12, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), and the National Association of Securities Dealers, Inc.'s (''NASD'' or ''Association'') Plan of Allocation and Delegation of Functions by NASD to Subsidiaries, notice is hereby given that on April 24, 1997, The Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 4611(d) to permit managers and co-managers of an underwriting syndicate participating in a secondary offering of a security listed and traded on Nasdaq to register as a market maker in such issue on a same-day basis on the day of the secondary offering. (Additions are italicized; deletions are bracketed.)

* * * * *

NASD Rule 4611

(a)–(c) No change.

(d) A Nasdaq market maker may become registered in an issue already included in Nasdaq by entering a registration request via a Nasdaq terminal. If registration is requested in an issue that has been included in Nasdaq for more than five (5) days, and the requirements of paragraph (b) above are satisfied, registration shall become effective on the day after the registration request is entered. *Provided*, [If] however, *that same day registration is permissible for:*

(*1*) a Nasdaq market maker, registered in a security that is the subject of a publicly announced merger or acquisition offer with another Nasdaq issue, *who* seeks registration in the other merger or acquisition issue*;* [, same-day registration is permissible.]*; and*

(*2*) *a manager or co-manager of an underwriting syndicate for a secondary offering of a security on the day of the secondary offering of that security.*

(e)–(g) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NASD Rule 4611(d) provides that an NASD member may register as a Nasdaq market maker in an issue by entering a registration request ''on-line'' via a Nasdaq terminal. For issues that have been trading on Nasdaq for more than five days, however, ''on-line'' registrations are not effective until the day after the registration request is made (''One-Day Delay Rule''). This one-day delay for market maker registration in non-IPOs is designed to minimize the potential for ''fair weather'' market making. Specifically, the one-day delay helps to assure that members registering as market makers are making a legitimate commitment of their capital to the issue for the betterment of the market, not just to capture short-term trading profits during brief periods of favorable market conditions.

While Nasdaq continues to believe that the one-day delay in market maker registration serves to minimize the potential for ''fair weather'' market makers, there have been instances where managers and co-managers of an underwriting syndicate for a secondary offering have been precluded from trading the issue on the day of the secondary offering because they did not submit a market maker registration request on the day before the offering. Accordingly, in light of the inherent commitment of managers and co-managers of underwriting syndicates to their issues, the need for these members to make a market in the stock to manager their risk, and the additional liquidity and pricing efficiency that these market makers can provide, Nasdaq is proposing to amend NASD Rule 4611(d) to permit managers and co-managers of a secondary offering to register in that issue on a same-day basis on the day of the secondary offering.

Nasdaq believes the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Specifically, by permitting managers and co-managers of secondary offerings to become registered market makers in such issues on the day of the secondary offering, Nasdaq believes the proposal will enhance the liquidity and stability of the market, facilitate greater market maker competition, and promote the capital formation process by enabling managers and co-managers of secondary offerings to better manage their risks associated with the offering. At the same time, given the inherent commitment of managers and co-managers to the stocks they underwrite, Nasdaq does not believe that permitting managers and co-managers of secondary offerings to register in such issues on a same-day basis on the day of the offering will compromise the regulatory purposes underlying the ''One-Day Delay Rule.''

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–97–31 and should be submitted by June 6, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority (17 CFR 200.30–3(a)(12) (1989)).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12889 Filed 5–15–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38608; File No. SR–NASD–97–17]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Fees Charged for the Nasdaq Level 1 Service

May 12, 1997.

On March 3, 1997, the National Association of Securities Dealers, Inc. (''NASD'') and the Nasdaq Stock Market, Inc. (''Nasdaq'') (hereinafter referred to collectively as ''Nasdaq'' or the ''Nasdaq Stock Market'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 19(b) of the Securities Exchange

Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase the monthly fee charged for Nasdaq Level 1 Service. On March 18, 1997, the Nasdaq Stock Market filed Amendment No. 1 to the proposal.[3]

Notice of the proposal, as amended, was published for comment and appeared in the **Federal Register** on March 26, 1997.[4] No comment letters were received on the proposed rule change.

This order approves the Nasdaq proposal.

I. Description of the Proposal

The Nasdaq Stock Market proposes to establish a fee increase for Nasdaq Level 1 Service [5] to reflect the increased value of the data being disseminated via this Service. Under the new SEC Order Handling Rules,[6] Nasdaq quotations now contain additional information that was not previously available to subscribers. That is, pursuant to SEC Rule 11Ac1–4,[7] customer limit orders are now displayed in market maker quotations. In addition, Nasdaq's Level 1 Service includes price information from electronic communications networks (''ECNs'') that was not previously available through this Service. Thus; to reflect the increased value of the transparency of Nasdaq quotes under these new rules and the price discovery information available in the Nasdaq Stock Market, Nasdaq believes that the fee for such service should be increased.

Nasdaq proposes to increase by $1.00 the current monthly fee for the receipt of Nasdaq quote and trade information, resulting in a $20 fee per month per authorized device for Level 1 Service. As noted above, the Nasdaq Level 1 Service will include limit order information (*i.e.*, the best priced orders to buy and sell) and ECN prices. This information provides valuable information to investors and other market participants and helps in price discovery. This fee increase will become effective immediately upon issuance of this order because over 60% of Nasdaq securities as measured by median daily dollar volume now are subject to the new SEC order handling rules.[8] Nasdaq believes that value of the Level 1 Service has increased substantially since Nasdaq's higher volume securities now are subject to the new rules.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, the requirements of Section 15A(b)(5).[9] Section 15A(b)(5) requires that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the association operates or controls. The Commission believes that the increased fee for Nasdaq Level 1 Service is reasonable and results in an equitable allocation of the costs associated with gathering and disseminating the additional information required as a result of implementation of the new Order Handling Rules. Accordingly, the Commission finds that the Nasdaq's proposal is appropriate and consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD–97–17) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Nasdaq clarifies that the filing is made on behalf of the NASD and the Nasdaq Stock Market, Inc. Amendment No. 1 also includes additional discussion regarding the statutory basis for the fee increase for Nasdaq Level 1 Service. Finally, Amendment No,. 1 corrects several typographical errors in the original filing. *See* letter form Eugene A. Lopez, Assistant General Counsel, Office of General Counsel (''OGC''), Nasdaq, to Michael Walinskas, Senior Special Counsel, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated March 17, 1997 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 38417 (March 18, 1997), 62 FR 14487 (March 26, 1997).

[5] This service includes the following data: (1) inside bid/ask quotations calculated for securities listed on The Nasdaq Stock Market and securities quoted on thee OTC Bulletin Board (''OTCBB'') Service; (2) the individual quotations or indications of interest of broker/dealers utilizing the OTCBB service; and (3) last sale information on securities classified as designated securities in the Rule 4630, 4640, and 4650 Series and securities classified as over-the-counter equity securities in the Rule 6600 Series. *See* NASD Rule 7010(a).

[6] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (0rder Handling Rules Adopting Release).

[7] 17 CFR 240.11Ac1–4.

[8] Telephone conversation between Eugene A. Lopez, Assistant General Counsel, OGC, Nasdaq, and James T. McHale, Special Counsel, OMS, Division, Commission, on May 8, 1997. As originally proposed, Nasdaq was to delay implementation of the fee increase until the latter of April 1, 1997, or such time when more than half of Nasdaq securities as measured by median daily dollar volume are subject to the Order Handling Rules.

[9] 15 U.S.C. 78o–3(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[FR Doc. 97–12894 Filed 5–15–97; 8:45 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38609; File No. SR–PCX–97–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc., Relating to Name Change From SCOREX to P/COAST

May 12, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 28, 1997, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its Rules to change references to its electronic equity order routing and execution system, from ''SCOREX'' to ''P/COAST.'' The text of the proposed rule change is attached as Exhibit A to the rule filing.

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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

During 1996, the Exchange phased out its former electronic equity order

[1] 15 U.S.C. 78s(b)(1).

routing and execution system known as SCOREX[2] and concurrently, phased in and upgraded its new system, known as P/COAST.[3] Accordingly, the Exchange is proposing to replace all references to ''SCOREX'' in the Exchange's Rules with references to ''P/COAST.''

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[4] in that it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is concerned solely with the administration of the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and subparagraph (e) of Rule 19b–4 thereunder.[6]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Pacific Exchange. All submissions should refer to File No. SR–PCX–97–14 and should be submitted by June 6, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12891 Filed 5–15–97; 8:45 am]

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[2] Securities Communication Order Routing and Execution System.

[3] Pacific Computerized Order Access Securities System.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38604; File No. SR–PTC–97–01]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Limited Cross-Guarantee Agreements

May 9, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 11, 1997, the Participants Trust Company (''PTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–PTC–97–01) as described in items I and II below, which items have been prepared primarily by PTC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend PTC's rules to permit PTC to enter into limited cross-guarantee agreements with other clearing organizations.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend PTC's rules to permit PTC to enter into limited cross-guarantee agreements contain a guarantee from one clearing agency to another clearing agency that can be invoked in the event of a default of a common member. The guarantee provides that the resources of a defaulting common member remaining after its obligations to the guaranteeing clearing agency have been satisfied will be used to satisfy its obligations that remain unsatisfied at the other clearing agency. The guarantee is limited to the amount of a defaulting common member's resources remaining at the guaranteeing clearing agency.

Generally, limited cross-guarantee agreements may be beneficial to the clearing agency because amounts available under limited cross-guarantee agreements may be applied to satisfy or reduce unpaid obligations of the defaulting participant. With regard to PTC, these amounts may reduce charges against the participants fund or amounts borrowed from other participants or third party lenders or allocations of losses to the original counterparties of a defaulting participant under PTC's rules. The benefits generally accruing to the clearing agencies from a limited cross-guarantee agreement are illustrated by the following example: Participant A, a common participant of clearing agency 1 and clearing agency 2, declares bankruptcy. Upon insolvency, participant A owes clearing agency 1 $10 million and clearing agency 2 owes participant A $7 million. In the absence of an inter-clearing agency limited cross-guarantee agreement, clearing agency 2 would be obligated to pay $7 million to participant A's bankruptcy estate and clearing agency 1 would have

[2] The Commission has modified the text of the summaries prepared by PTC.

a claim for $10 million against participant A's bankruptcy estate as a general creditor with no assurance as to the extent of recovery. However, an effective cross-guarantee arrangement would obligate clearing agency 2 to pay clearing agency 1 an amount equal to participant A's $7 million receivable from clearing agency 2 thereby reducing clearing agency 1's net exposure from $10 million to $3 million. This approach would enable clearing agency 1 to secure earlier payment and would allow clearing agency 2 to fulfill its obligations without making an actual payment to participant A's bankruptcy estate.

PTC currently intends to enter into a limited cross-guarantee agreement with MBS Clearing Corporation (''MBSCC''), a clearing agency registered under the Act. At a later date, PTC may determine to enter into limited cross-guarantee agreements with other clearing organizations, subject to authorization by PTC's Board of Directors.

In order to allow PTC to enter into one or more limited cross-guarantee agreements with other clearing organizations, the proposed rule change will add new Rule 9, to Article IV of PTC's rules to govern PTC's limited cross-guarantee agreements. As proposed, the rule will authorize PTC to enter into limited cross-guarantee agreements, subject to approval of PTC's Board of Directors. The rule also provides that each participant will be liable to PTC for any payments that PTC is required to make with respect to such participant pursuant to a limited cross-guarantee agreement, and that securities, funds, or other property of the participant to which PTC has a lien, other than securities in the participants' proprietary or agency accounts, may be applied in satisfaction of such obligation. In addition, the rule provides that amounts received by PTC under any limited cross-guarantee agreement will be applied to reduce the common participant's unpaid obligations to PTC and assessments made in respect thereof under PTC's rules.

PTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[3] and the rules and regulations thereunder because it is designed to assure the safeguarding of securities and funds in the custody or control of PTC or for which it is responsible and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The staff of the Board of Governors of the Federal Reserve System (''Board of Governors'') has concurred with the Commission's granting of accelerated approval.[4]

(B) Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

PTC has not solicited and does not intend to solicit comments on this proposed rule change. PTC has not received any unsolicited written comments from participants or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[5] The Commission believes that PTC's rule change is consistent with its obligation to assure the safeguarding of securities and funds in its custody or control because, as the Commission found in several recently approved limited cross-guarantee agreements,[6] PTC's proposed limited cross-guarantee agreement is a method to reduce the risk of loss due to a common member's default.

The Commission also believes the rule change is consistent with PTC's obligation under Section 17A(b)(3)(F) to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The Commission believes that by entering into such cross-guarantee agreements, PTC and the other clearing agencies can mitigate the systemic risks posed to them and to the national clearance and settlement system that arises as a result of a defaulting member.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing because accelerated approval will allow PTC to immediately participate in a limited cross-guarantee agreement with MBSCC thereby allowing both PTC and MBSCC to benefit from the reduction of risk that results from this type of arrangement.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to the file number SR–PTC–97–01 and should be submitted by June 6, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–PTC–07–01) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12824 Filed 5–15–97; 8:45 am]

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[3] 15 U.S.C. 78q–1.

[4] Telephone conversation between Theo Lubke, Board of Governors, and Jeffrey Mooney, Attorney, Division of Market Regulation, Commission (May 8, 1997).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] Securities Exchange Act Release Nos. 37616 (August 28, 1996) 61 FR 46887. [File Nos. SR–MBSCC–96–02, SR–GSCC–96–03, and SR–ISCC–96–04] (order approving proposed rule changes seeking authority to enter into limited cross-guarantee agreements) and 38410 (Mary 17, 1997) 62 FR 13931 [File No. SR–OCC–96–18] (order granting approval of proposed rule change to revise rules to include limited cross-guarantee agreements).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38606; File No. SR–Phlx–97–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc., Relating to Specialist Wheel Rotation Frequency

May 9, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 24, 1997, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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. On May 9, 1997, the Phlx submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Floor Procedure Advice (''Advice'') F–24, AUTO–X Contra-Party Participation (the ''Wheel''), regarding Wheel rotations to the specialist. The Wheel is an automated mechanism for assigning floor traders (i.e., specialists and registered options traders (''ROTs'')), on a rotating basis, as contra-side participants to AUTO–X orders. AUTO–X is the automatic execution feature of the Exchange's Automated Options Market (''AUTOM'') system,[4] which provides customers with automatic executions of eligible option orders at displayed markets. Currently, the Wheel allocates the first trade of every day to the specialist. Thereafter, if four or less ROTs are participating on the Wheel, the specialist participates in a normal rotation. However, if five or more ROTs have signed-on the Wheel, the specialist receives every fifth execution.

At this time, the Exchange proposes to amend Advice F–24(e) to reduce the rotation frequency for the specialist in larger crowds. Specifically, if there are, on average, five to 15 Wheel participants (including the specialist), the specialist would receive every fifth execution, and if there are, on average, 16 or more Wheel participants, the specialist would receive every tenth execution. Where the Wheel will be set to ''every tenth execution,'' the specialist's rotation frequency will thereafter be automatically reduced from every tenth execution to a normal, consecutive rotation, when the number of signed-on Wheel participants becomes less than ten. Thus, where there were 16 or more Wheel participants on average, once only nine participants are signed-on, the specialist rotation frequency drops to a normal rotation. In contrast, in trading crowds averaging five to 15 Wheel participants, the specialist rotation would be every fifth execution, including where there are nine Wheel participants; if this crowd dropped to three Wheel participants, the specialist would receive a normal rotation (every fourth execution).

The average number of Wheel participants would be determined, in accordance with procedures established by the Exchange, upon implementation of this proposal, and adjusted thereafter by request from a participant on that Wheel (except where adjusted automatically under this proposal, as explained above). Specialist Wheel rotation frequency would otherwise carry over from day-to-day. Adjustments would become effective as soon as practicable the following trading day (allowing staff time to count, input and activate a different rotation level). The Exchange may establish procedures and limitations in order to reasonably process such requests without impairing Wheel operations, based on the availability of regulatory/surveillance and systems staff, and with due regard for prevailing market conditions.

The Exchange also proposes to adopt a new provision into advice F–24(e) permitting the Options Committee (or its designees) to establish a larger minimum Wheel rotation increment than the current two-five-ten lot rotation dependent upon the AUTO–X guarantee in that issue, if requested by the specialist and Wheel participants. Any such larger rotation cannot exceed ten contracts, such that this provision would permit rotations of three—ten contracts in specific issues.

The complete text of the proposed rule change is available at the Office of the Secretary, Phlx, and at the Commission..

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of an basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of the these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange's Wheel provisions were approved by the Commission in 1994 as Advice F–24.[5] The purpose of the Wheel is to increase the efficiency and liquidity of order execution through AUTO–X by including all floor traders in the automated assignment of contra-parties to incoming AUTO–X orders. Previously, only the specialist could be the *automatic* contra-side participant to AUTO–X trades, with ROT participation requiring manual intervention by the specialist. The Wheel is intended to make AUTO–X more efficient, as contra-side participation will be assigned automatically, and no longer entered manually. The Wheel is also intended to promote liquidity by including ROTs, as opposed to solely Specialists, as a contra-side to AUTO–X orders.

The floor-wide roll-out of the Wheel was completed the week of April 21, 1997. In November, 1996, the Exchange filed a proposed rule change to rotate the Wheel in a two-five-ten lot rotation, depending on the size of the AUTO–X guarantee.[6] As a result of that proposal, experience and input from the continued roll-out and an in-depth review by the sub-committee and committee processes, an additional change to the Wheel procedures is proposed at this time. The proposed change to the specialist wheel rotation frequency is intended to address the comments and concerns of the membership, including improving the

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[1] 15 U.S.C. 78x(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Philip H. Becker, Senior Vice President and Chief Regulatory Officer, Phlx to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, SEC, dated May 8, 1997 (''Amendment No. 1''). In Amendment No. 1, the Phlx designated File No. SR–Phlx–97–20 be submitted pursuant to Section 19(b)(2) of the Act, rather than pursuant to Section 19(b)(3)(A), as originally requested.

[4] AUTOM is an electronic order routing and delivery system for option orders.

[5] *See* Securities Exchange Act Release No. 35033 (November 30, 1994), 59 FR 63152 (December 7, 1994) (SR–Phlx–94–32).

[6] *See* Securities Exchange Act Release No. 37977 (November 25, 1994), 59 FR 63899 (December 2, 1994) (SR-Phlx-94–32).

efficiency of the Wheel and eliminating a disproportionate allotment to the specialist in larger crowds. This proposal specifically addresses the issue of specialist rotation frequency raised by commenters on the aforementioned proposed rule change.[7]

Specifically, Advice F–24(e) is proposed to be amended such that the specialist would receive every tenth execution, if there are 16 or more Wheel participants in a particular issue. As stated above, the purpose of this change is to more equitably allocate Wheel participation in larger crowds. The Exchange notes that a greater participation level for specialists in smaller crowds is currently applicable pursuant to Rule 1014(g)(ii) and (iii), the enhanced specialist participation provisions.

The Exchange is also proposing to enable the Options Committee to establish a different rotation increment not to exceed ten contracts. Currently, as explained above, the Wheel rotates in different increments, depending upon the size of the AUTO–X guarantee in that issue. For instance, where the AUTO–X guarantee is for one to ten contracts, the Wheel rotates in two lot increments, meaning a ten lot would be divided in two lots to five Wheel participants. Where the AUTO–X guarantee is 11–25 contracts, the Wheel rotates in five lot increments, and where the guarantee exceeds 25 contracts (up to the maximum permissible 50 contracts), the Wheel rotates in ten lot increments. At this time, the Exchange proposes to allow the Wheel to rotate in an increment larger than permissible under the current framework, but no greater than ten contracts. The Options Committee may determine to allow a differing rotation, if requested by the Specialist and wheel participants, and following adequate notice to the trading floor.

The purpose of this provision is to improve the efficiency of the Wheel by allowing a greater rotation increment, meaning fewer participants and reports generated, in specific situations. Certain options may be subject to a lower, ten contract guarantee due to the high volatility associated with the underlying security(ies), yet, due to heavy volume, warrant a larger, more efficient wheel rotation increment. Also, very small trading crowds (with few Wheel participants) may request a larger rotation increment to reduce the number of executions received by each participant, preferring to accept larger but more infrequent execution reports. The Exchange believes that this provision should improve Wheel efficiency by recognizing that the trading patterns and dynamics of trading crowds differ extensively across the options floor.

The Exchange notes that this proposal does not affect the price or time of AUTO–X executions. AUTO–X trades receive an automatic execution with immediate reporting, and the Wheel determines only the identity of the contra-side participant, as opposed to the process, time of price of the actual execution.

For these reasons, the Exchange believes the proposed rule change is consistent with Section 6 of the Act[8] in general, and in particular, with Section 6(b)(5),[9] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and does not permit unfair discrimination between customers, issuers, brokers and dealers, by more fairly allocating Wheel trades to specialist in larger crowds.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Although no written comments were either solicited or received specifically on this proposal, the Exchange received a petition dated January 20, 1997 generally requesting changes to the Wheel.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

((B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–97–20 and should be submitted by June 6, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12882 Filed 5–15–97; 8:45 am]

BILLING CODE 8010–01–M

[7] *See* SR-Phlx-96–49.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38615; International Series Release No. 1079; File No. SR–ISCC–96–05]

Self-Regulatory Organizations; International Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Election of Directors

May 12, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 11, 1996, the International Securities Clearing Corporation (''ISCC'') filed with the Securities and Exchange Commission (''Commission'') and on October 17, 1996, December 11, 1996, March 21, 1997, and May 8, 1997, filed amendments to the proposed rule change (File No. SR–ISCC–96–05) as described in Items I, II, and III below, which items have been prepared primarily by ISCC. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ISCC is filing the proposed rule change to amend its procedures for election of directors.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISCC included statements concerning the purpose of, and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule is to modify ISCC's by-laws and to adopt an Amended and Restated Shareholders Agreement between ISCC and the National Securities Clearing Corporation (''NSCC''), ISCC's sole shareholder. ISCC's current by-laws and shareholders agreement set forth provisions establishing the number and composition of ISCC's board as well as the procedures for the election of directors. Such provisions provide for a staggered board of twenty-two directors composed of management, shareholder, and participant directors divided into four classes. Each director is nominated by a nominating committee consisting of seven members. ISCC participants have the opportunity to nominate additional candidates for directors and the right to vote in the event that additional nominees are submitted by participants.

In connection with its original application for registration as a clearing agency, ISCC obtained and continues to have a temporary exemption from Section 17A(b)(3)(C) of the Act,[3] which exemption permits NSCC to retain control over the composition of ISCC's board.[4] Since that time, NSCC has continued to appoint ISCC's entire board.

The proposed rule change retains the process of the selection of directors by the nominating committee, but the nominating committee will be reduced from seven persons to three persons divided into two classes whose terms would expire on a staggered basis every two years. Beginning in 1998, at least fifteen business days prior to the regularly scheduled board meeting, which is (i) closest in time to the upcoming annual meeting of shareholders and (ii) at least ninety days before such annual meeting, the nominating committee will submit by overnight mail or by telefax its list of nominees to fill the nominating committee positions whose terms are expiring immediately following such annual meeting (*i.e.*, for the nominating committee that will serve for the next year's election).[5] The Secretary will include such list in the materials sent to the directors in connection with such board meeting.

At the board meeting, the board may nominate individuals for one or more vacancies on the nominating committee. The board must notify the Secretary of any nominations within two business days of the meeting by overnight mail, telefax, or telephone. Within three days of receipt of nominees from the board, the Secretary must mail a list of all nominees to each participant.

Participants have the right to nominate candidates for the nominating committee and for the board of directors by filing with the Secretary, not less than sixty days prior to the date of the annual meeting, a petition signed by the lesser of 5% of all participants or fifteen participants. If a participant petition is filed or the board nominates additional candidates to the nominating committee, the Secretary will mail, at least forty-five days prior to the date of the annual meeting, to each participant a ballot setting forth all of the nominees. Each participant is entitled to one vote for each ten dollars of its average monthly fee payable or paid by the participant to ISCC during the previous twelve month period. Participants must return their ballots to the Secretary at least fifteen days prior to the annual meeting. NSCC will then vote its shares in favor of the nominees selected by the participants.

The board of directors will also be reduced from twenty-two to seven directors of which two will be selected by NSCC. The NSCC directors will serve one year terms. The other five directors will be divided into three classes and their terms will expire on a staggered basis. ISCC believes that the reduced size of its board of directors and nominating committee is more suitable given ISCC's relatively small number of participants (forth-four as of September 30, 1996). Furthermore, ISCC believes that because its board will no longer be selected by NSCC upon approval of the changes proposed herein, there will no longer be a need for ISCC to receive an exemption from the fair representation requirement.

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[6] because it enables ISCC to comply with Section 17A(b)(3)(C) of the Act[7] thereby eliminating the need for ISCC to obtain an exemption from complying with such requirement.

(B) Self-Regulatory Organization's Statement on Burden on Competition

ISCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. ISCC will notify the Commission of any written comments received by ISCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which ISCC consents, the Commission will:

[2] The Commission has modified these summaries.

[3] 15 U.S.C. 78q–1 (b)(3)(C).

[4] At the time of its initial temporary registration, ISCC argued that it did not have a meaningful participant base which required the protections for fair representation. (ISCC had twelve participants.) ISCC believed that if only a small number of participants were able to use the provisions for the nomination of the board and nominating committee members, each participant would have had inordinate control of the nominations and voting. Moreover, NSCC was interested in controlling ISCC's board because it believed the financial risk it had assumed on ISCC's behalf due to its guarantee of certain ISCC obligations was substantial. Securities Exchange Act Release No. 26812 (May 12, 1989), 54 FR 21691 (order granting temporary approval of ISCC's registration as a clearing agency).

[5] The nominating committee that will select candidates for the 1998 annual meeting of shareholders will be appointed by the board of directors.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1(b)(3)(C).

(a) By order approve such proposed rule change or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of ISCC. All submissions should refer to the file number (ISCC–96–05) and should be submitted by June 6, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12892 Filed 5–15–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2544]

Bureau of Oceans and International Environmental and Scientific Affairs; International Harmonization of Chemical Safety and Health Information

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs (OES); Department of State.

ACTION: Notice of a public meeting regarding Government Activities on International Harmonization of Chemical Classification and Labeling Systems.

SUMMARY: This public meeting follows the close of the comment period on this subject on June 2, 1997. The **Federal Register** of April 3, 1997 contained Department of State Public Notice 2526 on pages 15951–15957. Please refer to the notice for more complete information on the harmonization process. The meeting will offer the opportunity for interested organizations and individuals to provide information and views for consideration in the development of U.S. government policy positions in follow-up to the above-mentioned **Federal Register** notice.

The date of the meeting is June 5, 1997. It will be held at the U.S. Department of Labor, 200 Constitution Avenue, Washington, DC, in room S4215ABC. Use the entrance at C and Third Streets, NW. To facilitate entry, please have a picture ID available and/or a U.S. government building pass if applicable. The meeting will begin at 10:00 a.m. and is scheduled to last two hours.

Participants in the meeting may submit written comments as well as speak on topics relating to harmonization of chemical classification and labeling systems. Representatives of the following agencies will participate in the meeting: The Environmental Protection Agency, Department of State, Department of Commerce, Food and Drug Administration, Department of Agriculture, U.S. Trade Representative, Consumer Product Safety Commission, Department of Transportation, Occupational Safety and Health Administration, and the National Institute of Environmental Health Sciences. The agenda will include an update on the progress of harmonization efforts, comments received in response to the April 3 **Federal Register** notice, and a review of upcoming international meetings.

For further information, please contact Mary Frances Lowe, U.S. Department of State, OES/ENV, Room 4325, 2201 C Street, NW, Washington, D.C., 20520, Phone: (202) 647–9278, fax: (202) 647–5947.

Comments in writing may be submitted to Ms. Lowe at the address or fax number provided above.

Dated: May 8, 1997.

Michael Metelits,

Director, Office of Environmental Policy, Bureau of Oceans and International Environmental and Scientific Affairs.

[FR Doc. 97–12861 Filed 5–15–97; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF STATE

[Public Notice No. 2542]

Shipping Coordinating Committee Council and Associated Bodies; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:00 a.m. on Tuesday, June 3, 1997, in Room 1103, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the 78th session of the Council and the 44th Session of the Technical Cooperation Committee of the International Maritime Organization (IMO), which are scheduled for June 23–27, 1997, at IMO Headquarters in London. At the meeting, discussions will focus on papers received and draft U.S. positions. Among other things, the items of particular interest are:

a. Reports of the IMO committees.

b. Review of the IMO technical cooperation activities.

c. Relations with the United Nations.

d. Reports for World Maritime University and International Maritime Law Institute.

e. Work program and budget for 1998–1999.

f. Administrative and financial matters.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Gene F. Hammel, U.S. Coast Guard Headquarters (G–CI), 2100 Second Street, SW., Room 2114, Washington, DC 20593–0001, by calling: (202) 267–2280, or by faxing: (202) 267–4588.

Dated: May 6, 1997.

Russell A. LaMantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 97–12848 Filed 5–15–97; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF STATE

[Public Notice 2540]

Preparation of Special Report on the Regional Impacts of Climate Change

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs, State.

ACTION: Notice of the availability of draft report and request for comments.

SUMMARY: Working Group II of the Intergovernmental Panel on Climate Change (IPCC) has prepared a Special Report on the Regional Impacts of Climate Change. The IPCC Secretariat requires comments on this report from

[8] 17 CFR 200.30–3(a)(12).

national governments so that the Secretariat can meet its obligations to member governments of the IPCC. The U.S. Government is expected to receive its copy of the draft assessment for formal government comment on or about April 30, 1997. The U.S. Subcommittee on Global Change Research (SGCR) is handling the gathering of comments to be considered in the preparation of the formal comments by the United States Government. Through this notice, the SGCR is announcing the availability of the report and is requesting comments on the draft report by May 27, 1997 from experts and interested groups and individuals. These comments will be reviewed, combined, and incorporated as appropriate, in the process of preparing the set of official U.S. comments to the IPCC.

SUPPLEMENTARY INFORMATION:

Background

The Intergovernmental Panel on Climate Change (IPCC) was jointly established in 1988 by the United Nations Environment Programme and the World Meteorological Organization to conduct periodic assessments of the state of knowledge concerning global climate change. The IPCC has formed working groups to study various aspects of climate change. Working Group I addresses the state of the science concerning what is happening and is projected to happen to the climate; Working Group II addresses the state of the science concerning (i) vulnerability to and impacts of climate change and (ii) adaptation and mitigation strategies; and Working Group III addresses the state of science and understanding concerning economics and cross-cutting issues associated with climate change. Since finishing the Second Assessment Report in late 1995, the IPCC has undertaken four Special Reports (covering the regional impacts of climate change, emission scenarios, aviation and the global atmosphere and technology transfer) and several technical papers.

Report Outline

Foreword

Summary for Policymakers

1. Introduction
2. Africa
3. Arctic/Antarctic
4. Australasia
5. Europe
6. Latin America
7. Middle East/Arid Asia
8. North America
9. Small Island States
10. Temperate East Asia
11. Tropical Monsoon Asia
12. Synthesis (if deemed necessary)

Annexes:

A. Observed Changes in Regional Climate
B. Simulation of Regional Climate Change with Global Coupled Climate Models and Regional Modeling Techniques
C. Simulated Changes in Vegetation Distribution

Public Input Process

The member countries of the IPCC have established a timetable that includes a brief period for comments from governments so that the IPCC Secretariat can meet its obligations for a timely completion of this Special Report. The Subcommittee on Global Change Research is responsible for coordinating preparation of the U.S. Government response, and through this notice is seeking the views of experts and interested groups and individuals to help in the formulation of its response. Comments that are provided will be reviewed, integrated, and used, as appropriate, in the preparation of the official U.S. comments. An information sheet providing specific requests for formatting submissions will be provided with each distribution of a chapter. In this review process, the emphasis should be on providing detailed recommendations for changes or modifications in specific chapters for which the reviewer has established expertise or interest. To be most useful, comments should be specific in suggesting wording changes to the text of a particular paragraph or chapter and, where appropriate, offer supporting information and peer-reviewed references supporting the proposed changes. Comments on the overall tone and scientific validity of the chapter and comments expressing agreement and disagreement with specific major points in the Executive Summary of the chapters are also solicited; however, comments without specific suggestions for changes are of limited help in improving the chapters.

DATES: Comments should be received on or before May 27, 1997. The deadline cannot be extended because the member countries of the IPCC have established a strict timetable for the review process and the U.S. Government requires time for development of its formal comments.

Distribution Process: Full copies of this report will be sent to all SGCR agencies and will be available upon request to scientific reviewers and to organizations and companies with the expectation that review comments will be provided for use in developing the official U.S. Government response. Copies of specific chapters will be sent to nominated chapter coordinators and reviewers. The North America Chapter will be available by regular mail, by facsimile, or as an e-mail attachment in a format that will preserve line numbers; figures and tables will be available for viewing over the Internet, linked to the USGCRP Home Page: www.usgcrp.gov. Persons requesting mailed copies (by express mail) may be requested to provide an account number to cover expenses.

ADDRESSES: Copies of individual chapters can be requested by sending an e-mail to USG.IPCC.Review.RegImp@usgcrp.gov, by sending a fax to the USGCRP Office (202–358–4103) or by sending a letter to the USGCRP Office (300 E St., SW., Code YS–1, Washington, DC 20546). Comments should be submitted, preferably by e-mail, to the same e-mail address (USG.IPCC.Review.RegImp@usgcrp.gov). A list of chapters making up the report is included with this notice.

FOR FURTHER INFORMATION CONTACT: Melissa Taylor, Office of the U.S. Global Change Research Program, at tel: 202–358–1299.

Dated: May 2, 1997.

Rafe Pomerance,

Deputy Assistant Secretary for Environment and Development, Bureau of Oceans and International Environmental and Scientific Affairs.

[FR Doc. 97–12895 Filed 5–15–97; 8:45 am]

BILLING CODE 4710–09–M

TENNESSEE VALLEY AUTHORITY

Proposed Construction of United States Penitentiary, Lee Pennington Gap, Virginia

AGENCY: Tennessee Valley Authority.

ACTION; Issuance of record of decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's (CEQ) regulations (40 CFR 1500 to 1508) and TVA's implementing procedures. TVA has decided to adopt the preferred alternative in the U.S. Department of Justice, Federal Bureau of Prisons' final environmental impact statement (FEIS), ''Final Environmental Impact Statement, United States Penitentiary, Lee, Pennington Gap, Virginia.'' The FEIS was made available to the public in October 1996. A Notice of Availability of the FEIS was published by the Environmental Protection Agency in the **Federal Register** on October 25, 1996 (61 FR 55294). The preferred alternative is to construct and operate a high-security United States Penitentiary

(USP), a minimum-security Federal Prison Camp (FPC), and other related ancillary facilities near the town of Pennington Gap, in central Lee County, Virginia. Related actions by Lee County, addressed as part of the preferred alternative, include providing property and water supply and wastewater treatment facilities for the proposed prison facilities.

To stimulate economic expansion, encourage job creation, and leverage capital investment in the TVA power service area, TVA has decided to provide a $2,000,000 loan to Lee County, Virginia, to assist in funding the county's actions related to the federal prison facilities near Pennington Gap. The loan will be used by Lee County to purchase a 288 acre (116 hectare) tract of land for the site of the proposed prison and to design the water supply and sewage treatment facilities for the prison. This loan will provide temporary (up to 12 month term) financing in anticipation of other federal (non-TVA) and state funding.

FOR FURTHER INFORMATION CONTACT: Linda Oxendine, Ph.D., NEPA Specialist, Tennessee Valley Authority, 400 West Summit Hill Drive, Mailstop WT 8C, Knoxville, Tennessee 37902, (423) 632–3440 or e-mail at lboxendine@tva.gov.

SUPPLEMENTARY INFORMATION: In October 1996, the Federal Bureau of Prisons released a FEIS on the proposed construction and operation of a high-security United States Penitentiary (USP), an adjacent minimum-security Federal Prison Camp (FPC), and other related ancillary facilities near the town of Pennington Gap, in central Lee County, Virginia. Included in the EIS were related activities by Lee County to provide property at Pennington Gap and water supply and wastewater treatment facilities for the project. In August 1996, as the Bureau was completing the FEIS, TVA received a request from Lee County for a $2,000,000 Economic Development Loan to assist in funding its actions related to the prison facilities. Therefore, TVA was not a cooperating agency in the preparation of the Federal Bureau of Prisons EIS. In accordance with CEQ regulations, following the determination that the FEIS adequately addressed TVA's action and was still generally available, TVA announced its decision to adopt the FEIS on March 27, 1997. A Notice of Adoption of the FEIS was published in the **Federal Register** by the Environmental Protection Agency on April 4, 1997 (62 FR 16154).

The prison facilities will be located on an approximately 288 acre (116 hectare) tract of land at the junction of U.S. Route 58 and VA Route 638 approximately eight miles (13 kilometers) south of Pennington Gap. The USP will house approximately 1,000 high-security inmates, while the FPC will house approximately 300 minimum security inmates. Inmates will come primarily from the Mid-Atlantic and Southeastern portions of the country. Other related facilities include staff training and administrative facilities, a prison industry facility, a central utility plant, and water supply and wastewater treatment facilities for the project.

The proposed prison facilities are needed to relieve the critical levels of overcrowding at the Federal Bureau of Prisons' high-security facilities which are extended beyond their critical limits and to provide space for the substantial number of cases awaiting redesignation to high-security facilities pending available bedspace. The facilities are needed even with the addition of high-security facilities planned for Beaumont, Texas, and Pollock, Louisiana.

Alternatives Considered

The following alternatives were considered by the Federal Bureau of Prisons and evaluated in the FEIS. These alternatives were designed to address comments received during the scoping process and to minimize potentially adverse environmental effects. Alternatives evaluated include the no action alternative, use of closed or scheduled to be closed military installations in the region pursuant to Section 20413 of the Violent Crime Control and Law Enforcement Act of 1994, and six alternative non-federally owned sites within Lee County. As reflected in the EIS, alternative sites were screened to determine their suitability against the anticipated site development requirements for a correctional facility and to identify potential environmental issues to be addressed.

Alternative A: No-Action

The proposed prison facilities would not be constructed at any location. Current overcrowding of high-security prisons within the Federal Prison System would continue. This alternative would not result simply in the continuation of the status quo. Eventually, action to address present and future overcrowding in high-security facilities would be required.

Alternative B: Use of Federally-Owned Sites

The Bureau conducted a review of Federally-owned sites in Virginia considered to be in reasonable proximity to metropolitan areas and which have (or could be expected to be provided with) the required utility services at reasonable cost. The review consisted of consultations with relevant agencies, including the General Services Administration (GSA), the Resolution Trust Corporation (RTC), and government officials of the Southwestern Virginia area. Department of Defense properties declared or likely to be declared excess were included in the GSA consultations. No military installations closed or scheduled to be closed were identified in the Southwestern Virginia area that warranted consideration pursuant to the Violent Crime Control and Law Enforcement Act.

Two facilities in Virginia are included on the lists addressed by the Violent Crime Control and Law Enforcement Act. Use of all or any portion of these military installations was considered to determine if their use would provide a cost-effective alternative to the acquisition of privately-owned property for the consideration of the proposed facility. The Bureau considered these properties not suitable for Bureau use and thus not reasonable alternative sites for the proposed prison facilities.

Alternative C: Use of Non-Federally-Owned Sites

Non-Federally-owned sites potentially available for acquisition in Southwestern Virginia and located in communities which indicated a willingness to accommodate such a facility were identified through consultations with local government officials.

Six properties were identified as potential sites for the proposed action as indicated by the Final EIS. All six sites were screened to determine their suitability (See p. II–14 of the FEIS). Screening activities included visual surveys and consultations with local planning and development officials. Site specific reconnaissance activities included visual inspection of the sites and observations in regard to current land uses at the sites and adjacent properties. Readily available documentation relating to the sites and surrounding environments was assembled including master plans, system utility data, environmental and historic features, and other relevant information. Each alternative site is examined in detail in the draft and the FEIS.

Based on comparison of the Lee County sites, the Pennington Gap site was chosen for more detailed review and identified by the Bureau as the

preferred alternative. The Bureau's selection of the Pennington Gap Site was based on environmental, engineering, and economic considerations as well as the ease of regional access offered by the site and the availability of planned utility improvements and other considerations.

Environmentally Preferred Alternative

TVA considers Alternative C, locating the prison facilities at Pennington Gap, to be the environmentally preferable alternative as required under 40 CFR 1505.2(b). This determination is based on the nature of the existing environment, the need to relieve overcrowding at high-security facilities in the Mid-Atlantic and Southeastern portions of the country, and the potential impacts to the physical, biological, and social environments as described in the EIS. The substantial economic investment of funds into the construction and operation of the prison facilities will greatly expand the economic base of Lee County. The no action alternative has the least impact on the physical and biological environments as no disturbance would occur, but it does not address the overcrowding and economic benefits. Based on cost analysis, no military property was considered to be a reasonable alternative. Of the alternative non-federally owned sites, the Pennington Gap site would have the least impact on the physical and biological environments and provide regional access and the availability of planned utility improvements.

Basis for Decision

TVA has decided to adopt the Pennington Gap alternative which was identified in the Federal Bureau of Prison's FEIS as the preferred alternative. TVA will provide an Economic Development Loan to Lee County in the amount of $2,000,000 to purchase the property for the project and to design the water supply and wastewater treatment facilities. TVA bases its decision on the economic development benefits of the project and its less-than-significant impact on the environment. Economic development benefits include over 300 new jobs and approximately 150 indirect jobs for the local area, with an annual payroll of $17.5 million of which $8.2 million would represent take-home wages. Additionally, the facilities will have an electric service capacity of 3.5 megawatts and an annual electric energy use of 16 million kilowatt-hours.

TVA concurs with the Bureau's determination that development of the Pennington Gap site will result in less-than-significant environmental impacts to the immediate project site and the surrounding community while providing benefits to the area's economy.

Environmental Consequences and Commitments

The Pennington Gap project will be similar in scale to a light industrial park or secondary school. Most buildings will be one-to four-story structures and will provide multi-purpose activity space, with areas divided according to function. Functional groupings will include administration, services, housing, religion, education, recreation, prison industries, and utilities. Detailed information describing project design, construction, and operations is included in the FEIS.

Construction and operation of the proposed project is not expected to have significant environmental impacts to the immediate project site and surrounding local communities. Those communities, including the towns of Pennington Gap and Jonesville, Lee County, and the surrounding area will benefit economically from having the proposed project located in the area. Project construction is estimated to cost approximately $90 million which can be expected to substantially increase the number of construction jobs available in the local area. Project construction will also provide opportunities for local companies to provide materials and supplies for the project.

Based on environmental analysis described in the EIS, no significant environmental impacts are anticipated to the area's land use patterns, utility services, and traffic and transportation movements to and from the proposed site. Additionally, the project is not expected to have significant impacts on noise, air quality, water quality, topographic conditions, aesthetics, wetland conditions, and endangered wildlife species.

Development of the site will require the disturbance of approximately 100 acres (40 hectares) or approximately 35 percent of the site. The area to be disturbed during construction includes the more level areas of open fields and hedgerows located within the eastern portion of the site. This will permit the more sensitive areas and habitats on the site to be avoided, specifically wetlands on the northern portion and Litton Cave No. 1 to the southeast.

To ensure that environmental impacts are minimized throughout the construction and operation of the project, the Bureau will conduct additional subsurface investigations during project design, focusing attention upon the movement of water from the site to the groundwater system and its potential for impacts upon water quality and subsidence. The Bureau will also specify methods to control and detect leakage from water and sewer lines during the planning and design, material specification, and construction of such lines to avoid leakage. In addition, the Bureau has prepared a conservation management plan for the continued maintenance and protection of the Litton Cave No. 1. The management plan will be implemented during the construction and operating phases of the project.

The proposed action to build the facilities, in concert with other actions, will contribute substantially to the efficient operation of the national criminal justice system. Secondary benefits on the area's economy will also be realized. Once the USP becomes operational, the annual operating budget is estimated to be approximately $25 million. Much of this amount can be expected to flow directly into the local economy through employee salaries, local service contracts and the purchases of utilities, goods and services. The facility will rely on public utility providers for the provision of water supply and wastewater treatment services. Positive economic benefits will accrue to these utility providers as a result. All plans for the provision of services and expansion of capacities will be fully coordinated with all appropriate officials. Provision of water supply and wastewater treatment services to serve the proposed project may allow indirect or secondary development impacts in the area. However, the limited development activity at the existing Lee County Industrial Park, given the availability of water and wastewater treatment facilities at the park, suggest that little, if any, additional development will occur. Based on input from local and regional planning officials, any indirect or secondary development impacts that may result are considered to be consistent with land use and economic development goals and objectives of the area.

Potentially adverse direct and indirect impacts, including construction-related impacts will be controlled, mitigated or avoided using all practicable means. All plans and specifications for the design and construction of the proposed facilities will include protective measures to minimize adverse affects during the construction phase of the project.

Dated: May 8, 1997.

Robert K. Johnson, Jr.,

General Manager, Business Systems Economic Development.

[FR Doc. 97–12846 Filed 5–15–97; 8:45 am]

BILLING CODE 8120–01–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week of May 9, 1997

The following Agreements were filed with the Department of Transporatation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–97–2448.

Date Filed: May 5, 1997.

Parties: Members of the International Air Transport Association.

Subject:

PTC12 MATL-Eur 0007 dated April 29, 1997

Mid Atlantic-Europe Expedited Resos rl–5

Intended effective date: June 1, 1997.

Paulette V. Twine,

Chief, Documentary Services.

[FR Doc. 97–12863 Filed 5–15–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending May 9, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause, a tentative order, or in appropriate cases a final order with out further proceedings.

Docket Number: OST–97–2468.

Date Filed: May 6, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 3, 1997.

Description: Application of AHK Air Hong Kong Limited, pursuant to 49 U.S.C. Section 40109 and Subpart Q of the Regulations, requests renewal of its foreign air carrier permit authorizing AHK to engage in charter foreign air transportation of property and mail between a point or points in Hong Kong and a point or points in the United States, and to conduct other cargo charters in compliance with the Department's Regulations. AHK respectfully requests that the permit be renewed for an additional five years.

Docket Number: OST–97–2486.

Date Filed: May 7, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 4, 1997.

Description: Joint Application of ALM Antillean Airlines N.V. and ALM 1997 Airlines N.V., pursuant to 49 U.S.C. Section 41403, and Subpart Q of the Regulations, requests transfer of ALM's foreign air carrier permit to ALM 1997, thereby authorizing ALM 1997 to engage in scheduled foreign air transportation of persons, property and mail between a point or points in the Netherlands Antilles; the intermediate points Santo Domingo, Dominican Republic; Port-au-Prince, Haiti; and Kingston and Montego Bay, Jamaica; and the co-terminal points Miami, Florida; New York, New York; and San Juan, Puerto Rico, and to operate charters to and from the U.S.

Docket Number: OST–97–2495.

Date Filed: May 9, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 6, 1997.

Description: Application of WestJet Airlines, Ltd., pursuant to 49 U.S.C. Section 41302 and Subpart Q of the Regulations, applies for an initial foreign air carrier permit authorizing it to engage in scheduled foreign air transportation of persons, property and mail between a point or points in Canada and a point or points in the United States of America. WestJet also requests authority to perform foreign charter air transportation between a point or points in Canada and a point or points in the United States of America, and between a point or points in the United States and a point or points outside of either the United States or Canada, subject to compliance with the Department's procedures in Part 212 of its Economic Regulations, 14 CFR Part 212.

Paulette V. Twine,

Chief, Documentary Services.

[FR Doc. 97–12864 Filed 5–15–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Training and Qualifications

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss training and qualification issues.

DATES: The meeting will be held on April 23 at 10:00 a.m.

ADDRESSES: The meeting will be held at the Regional Airlines Association, Second floor, 1200 19th St. NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Ms. Regina L. Jones, (202) 267–9822, Office of Rulemaking, (ARM–100) 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee (ARAC) to discuss training and qualification issues. This meeting will be held April 23, 1997, at 10:00 a.m., at the Regional Airlines Association. The agenda for this meeting will include progress reports from The Air Carrier Pilot Pay for Training Working Group, the Air Carrier Minimum Flight Time Requirements Working Group, and the Air Carrier Pilot Pre-Employment Screening Standards and Criteria Working Group.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on May 12, 1997.

Jean Casciano,

Acting Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–12923 Filed 5–15–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Pellston Regional Airport of Emment County, Pellston, Michigan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to the notice of intent to rule on application to impose a Passenger Facility Charge (PFC) at Pellston Regional Airport of Emment County, Pellston, Michigan.

SUMMARY: This correction amends the information included in the previously published notice.

In notice document 97–6807 on page 12874 in the issue of Tuesday, March 18, 1997, in the second column under **SUPPLEMENTARY INFORMATION,** the third paragraph should read as follows:

The following is a brief overview of the application.

PFC Application No.: 97–05–I–00–PLN.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 1997.

Proposed charge expiration date: September 1, 1997.

Total estimated PFC revenue: $17,500.00.

Brief description of proposed project: Replace Aircraft Rescue Fire Fighting Vehicle.

FOR FURTHER INFORMATION CONTACT: Mr. Jon B. Gilbert, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (313) 487–7281. The application may be reviewed in person at this same location.

Issued in Des Plaines, Illinois, on May 9, 1997.

Barbara J. Jordan,

Acting Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 97–12924 Filed 5–15–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Hennepin and Wright Counties, Minnesota

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent to terminate EIS.

SUMMARY: The FHWA is issuing this notice to advise the public that the current Environmental Impact Statement (EIS) process for a proposed highway project on Trunk Highway 12 (TH 12) in Hennepin and Wright Counties, Minnesota is terminated. The original notice of intent for this EIS process was published in the **Federal Register** during May 1992.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Environmental Engineer, Federal Highway Administration, Galtier Plaza, Box 75, 175 Fifth Street East, Suite 500, St. Paul, Minnesota 55101–2901, Telephone (612) 291–6120; or Patti Loken, Project Manager, Minnesota Department of Transportation—Metro Division, 1500 West County Road B2, Roseville, Minnesota 55113, Telephone (612) 582–1293.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation (MnDOT), has terminated the EIS process begun in 1992 to improve TH 12 in Hennepin and Wright Counties. The original proposed project would have involved the reconstruction of existing TH 12 from a two-lane, two-way roadway to a four-lane, divided roadway between TH 25 in Montrose, Wright County to TH 101 in Wayzata, Hennepin County, a distance of approximately 29 kilometers. The FHWA and MnDOT are no longer considering a four-lane upgrade because: (1) There is not sufficent funding available to build a four-lane alternative; (2) the Metropolitan Council does not support a four-lane alternative; and (3) the purpose and need for the project can be met by a build alternative with lesser scope. A modified project is proposed to upgrade approximately 8 kilometers of TH 12 in Hennepin County from Wayzata Boulevard in Wayzata to the intersection of County State Aid Highway 6 in Orono. The proposed project involves the construction of a new segment of two-lane, limited-assess highway along the north side of the Burlington Northern Sante Fe Railroad track, two interchanges and two connections with local roads. Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand, enhance safety and improve highway geometrics. An Environmental Assessment will be completed for the proposed project.

Coordination has been initiated and will continue with appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. Public meetings have been held in the past and will continue to be held, with public notice given for the time and place of the meetings. To ensure that the full range of issues related to this proposed action are addressed and all issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the need for an EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on May 8, 1997.

Stanley M. Graczyk,

Project Development Engineer, Federal Highway Administration.

[FR Doc. 97–12845 Filed 5–15–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–295 (Sub–No. 3X)]

The Indiana Rail Road Company—Discontinuance of Trackage Rights Exemption—in Marion County, IN

The Indiana Rail Road Company (INRD) has filed a notice of exemption under 49 CFR part 1152 Subpart F—Exempt Abandonments and Discontinuances of Trackage Rights to discontinue trackage rights over Consolidated Rail Corporation's (Conrail) Indianapolis Belt Running Track between milepost 0.0 at North Indianapolis, and milepost 5.3 at the connection between Conrail and INRD at Raymond Street, and over approximately 1.1 miles of the former Indianapolis Union Railway Company, now a portion of Conrail's St. Louis Line from approximately milepost 1.5, extending through ''IU'' interlocking and through the former Indianapolis

Union Station area to approximately milepost 0.4, a distance of approximately 6.4 miles in Indianapolis, Marion County, IN.[1] The line traverses United States Postal Service Zip Codes 46202, 46204, 46208, 46221, 46222, and 46225.

INRD has certified that: (1) No INRD local traffic has moved over the line for at least 2 years; (2) there is no INRD overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 15, 1997,[2] unless stayed pending reconsideration. Petitions to stay and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] must be filed by May 27, 1997. Petitions to reopen must be filed by June 5, 1997, with: Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Decided: May 13, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–12948 Filed 5–15–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–477 (Sub-No. 1X)]

Owensville Terminal Company, Inc—Abandonment Exemption—in Edwards and White Counties, IL and in Gibson and Posey Counties, IN

On April 15, 1997, Owensville Terminal Company, Inc. (OTC) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the Browns-Poseyville line, extending from railroad milepost 205.0 near Browns, IL, to railroad milepost 227.5 near Poseyville, IN, which traverses U.S. Postal Service Zip Codes 62818, 62844, 47616, and 47633, a distance of 22.5 miles, in Edwards and White Counties, IL, and Gibson and Posey Counties, IN. The line includes the stations of: Browns, MP 205.0; Grayville, MP 213.5; Griffin, MP 219.9; and Stewartsville, MP 225.4.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued within 90 days (by August 1, 1997).

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 and any request for trail use/rail banking under 49 CFR 1152.29 will be due no later than 20 days after notice of the filing of the petition for exemption is published in the **Federal Register**. Each trail use request must be accompanied by a $150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–477 (Sub-No. 1X) and must be sent to: (1) Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001, and (2) Thomas F. McFarland, Jr., McFarland & Herman, 20 North Wacker Drive, Suite 1330, Chicago, IL 60606–2902.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: April 28, 1997.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 97–12950 Filed 5–15–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Application for Recordation of Trade Name: ''Swiss Gold Premium Beer''

ACTION: Notice of Application for Recordation of Trade Name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C.

[1] INRD has filed a notice of exemption to acquire trackage rights over Conrail's Indianapolis Belt Running Track (Belt Track) near Raymond Street, Indianapolis, IN, at approximately milepost 5.3 and the end of Conrail's Belt Track at the connection with the former Norfolk and Western Railway Company at approximately milepost 13.5, in The Indiana Rail Road Company—Trackage Rights Exemption—Consolidated Rail Corporation, STB Finance Docket No. 33380.

[2] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historical documentation is required here under 49 CFR 1105.6(c)(6).

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. See 49 CFR 1002.2(f)(25).

1124), of the trade name ''SWISS GOLD PREMIUM,'' used by Westeinder Ltd., a corporation organized under the laws of the State of Delaware, located at 1013 Centre Road, Wilmington, Delaware 19899.

The application states that the trade name is associated with Swiss Beer.

The merchandise is manufactured in U.S.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

DATE: Comments must be received on or before July 15, 1997.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (Franklin Court), Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Delois P. Johnson, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (Franklin Court), Washington D.C. 20229 (202–482–6960).

Dated: April 28, 1997.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 97–12944 Filed 5–15–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4972

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4972, Tax on Lump-Sum Distributions.

DATES: Written comments should be received on or before July 15, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Tax on Lump-Sum Distributions.

OMB Number: 1545–0193.

Form Number: 4972.

Abstract: Internal Revenue Code section 402(e) and regulation section 1.402(e) allow recipients of lump-sum distributions from a qualified retirement plan to figure the tax separately on the distributions. The tax can be computed on the 5 or 10-year averaging method or by a special capital gain method. Form 4972 is used to compute the separate tax and to make a special 20 percent capital gain election on lump-sum distributions attributable to pre-1974 participation.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 140,000.

Estimated Time Per Response: 2hr., 53 min.

Estimated Total Annual Burden Hours: 403,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 7, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–12928 Filed 5–15–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6198

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6198, At-Risk Limitations.

DATES: Written comments should be received on or before July 15, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: At-Risk Limitations.

OMB Number: 1545–0712.

Form Number: 6198.

Abstract: Internal Revenue Code section 465 requires taxpayers to limit their at-risk loss to the lesser of the loss or their amount at risk. Form 6198 is used by taxpayers to determine their deductible loss and by IRS to verify the amount deducted.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, and farms.

Estimated Number of Responses: 121,400.

Estimated Time Per Response: 3hr., 36 min.

Estimated Total Annual Burden Hours: 437,040.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 12, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–12929 Filed 5–15–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 982

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness.

DATES: Written comments should be received on or before July 15, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Reduction of Tax Attributes Due to Discharge of Indebtedness.

OMB Number: 1545–0046.

Form Number: 982.

Abstract: Internal Revenue Code section 108 allows taxpayers to exclude from gross income amounts attributable to discharge of indebtedness in title 11 cases, insolvency, or a qualified farm indebtedness. Code section 1081(b) allows corporations to exclude from gross income amounts attributable to certain transfers of property. The data is used to verify adjustments to basis of property and reduction of tax attributes.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Responses: 1,000.

Estimated Time Per Response: 9 hrs., 13 min.

Estimated Total Annual Burden Hours: 9,210.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 12, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–12931 Filed 5–15–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–34–94]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the

Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–34–94 (TD 8653), Hedging Transactions by Members of a Consolidated Group (§§ 1.1221–2(d)(2)(iv), 1.1221–2(e)(5), and 1.1221–2(g)(5)(ii)).

DATES: Written comments should be received on or before July 15, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Hedging Transactions by Members of a Consolidated Group.

OMB Number: 1545–1480.

Regulation Project Number: FI–34–94.

Abstract: This regulation deals with the character and timing of gain or loss from certain hedging transactions entered into by members of a consolidated group of corporations. The regulation applies when one member of the group hedges its own risk, hedges the risk of another member, or enters into a risk-shifting transaction with another member.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 17,100.

Estimated Time Per Respondent: 4 hours, 27 minutes.

Estimated Total Annual Burden Hours: 76,050.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 12, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–12932 Filed 5–15–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–27

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–27, Changes in Methods of Accounting.

DATES: Written comments should be received on or before July 15, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Changes in Methods of Accounting.

OMB Number: 1545–1541.

Revenue Procedure Number: Revenue Procedure 97–27.

Abstract: The information requested in Revenue Procedure 97–27 is required in order for the Commissioner to determine whether the taxpayer properly is requesting to change its method of accounting and the terms and conditions of that change.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, and farms.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 3 hours, 13 minutes.

Estimated Total Annual Burden Hours: 9,633.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Approved: May 12, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–12933 Filed 5–15–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8482

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8482, agnetic Tape of Federal Tax Deposits.

DATES: Written comments should be received on or before July 15, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Magnetic Tape of Federal Tax Deposits.

OMB Number: 1545–1542.

Form Number: Form 8482.

Abstract: This form is used to transmit Federal Tax Deposit payment information on magnetic tape from authorized reporting agents and /or fiduciaries to the IRS Service Centers.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 14,000.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 700.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 12, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–12934 Filed 5–15–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision, Department of Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the purchase/transfer of assets and/or liabilities.

DATES: Written comments should be received on or before July 15, 1997 to be assured of consideration.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0025. These submissions may be hand delivered to 1700 G Street, NW. From 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755, or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

Copies of the Forms with instructions are available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days or from PubliFax, OTS' Fax-on-Demand system, at (202) 906–5660.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Pamela Schaar, Corporate Activities Division, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7205.

SUPPLEMENTARY INFORMATION:

Title: Purchase/Transfer of Assets and/or Liabilities.

OMB Number: 1550–0025.

Form Number: OTS Forms 1584, 1585, and 1589.

Abstract: This information collection provides OTS with information relating to the purchase or transfer of assets and/or liabilities of either the entire thrift or specific branch offices. Some of these filings consist of notices to the OTS that an application has been made with another Federal financial regulator.

Current Actions: OTS is proposing to renew this information collection without revision.

Type of Review: Extension of an already approved information collection.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 127.

Estimated Time Per Respondent: 3.24 hours on average.

Estimated Total Annual Burden Hours: 412.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 13, 1997.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 97–12905 Filed 5–15–97; 8:45 am]

BILLING CODE 6720–01–P

UNITED STATES INFORMATION AGENCY

Submission for OMB Review; Comment Request

AGENCY: United States Information Agency.

ACTION: Submission for OMB review; comment request.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the following new information collection activity has been forwarded to the Office of Management and Budget (OMB) for review and comment. USIA is requesting approval of an information collection entitled ''Certificate of Eligibility for Exchange Visitor Status (J–1 Visa)'', under OMB control number 3116–0215 (emergency approval). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 [Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)].

The information collection activity involved with the program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual and Educational and Cultural Exchange Act of 1961, Title 22 Code of Federal Regulations (CFR), Section 514, Exchange Visitor Program, Final Rule; and Title 8, Section 101(a)(15) of the Immigration and Nationality Act.

DATES: Comments are due on or before June 16, 1997.

COPIES: Copies of the Request for Clearance (OMB 83–I), supporting statement, and other documents that have been submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547, telephone (202) 619–4408, internet address JGiovett@USIA.GOV; and OMB review: Ms. Victoria Wassmer, Office of Information And Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 1002, NEOB, Washington, D.C. 20503, Telephone (202) 395–5871.

SUPPLEMENTARY 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. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on March 13, 1997 (vol. 62, no. 49). Emergency approval was granted by OMB for the interim use of this form through September 30, 1997.

Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116–0215) is estimated to average 30 minutes per response. Respondents are required to respond only one time, 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 the burden, to the United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, D.C. 205023.

Current Actions: This information collection has been submitted to OMB for the purpose of requesting a three-year extension and approval of revisions to the form.

Title: ''Certificate of Eligibility for Exchange Visitor Status (J–1 Visa)''.

Form Number: IAP–66–P.

Abstract: This form will be used to electronically collect and submit information in a limited pilot environment from non-immigrant exchange visitors participating in exchange visitor programs in the U.S. in order that INS and USIA can monitor the exchange visitors nonimmigrant status and ensure that the exchange visitors do not violate the conditions imposed by their nonimmigrant status while participating in an exchange visitor program.

Proposed Frequency of Responses: No. of Respondents—3,000, Recordkeeping Hours—.50, Total Annual Burden—1,500.

Dated: May 13, 1997.

Rose Royal,

Federal Register Liaison.

[FR Doc. 97–12877 Filed 5–15–97; 8:45 am]

BILLING CODE 8230–01–M

Federal Register

Friday
May 16, 1997

Part II

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Guidelines for the Photostability Testing of New Drug Substances and Products; Availability; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96D–0010]

International Conference on Harmonisation; Guideline for the Photostability Testing of New Drug Substances and Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a guideline entitled ''Guideline for the Photostability Testing of New Drug Substances and Products.'' The guideline was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guideline describes the basic testing protocol for photostability testing of new drug substances and products in original new drug application submissions. The guideline is an annex to the ICH guideline entitled ''Stability Testing of New Drug Substances and Products.''

DATES: Effective May 16, 1997. Submit written comments at any time.

ADDRESSES: Submit written comments on the guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the guideline are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573.

FOR FURTHER INFORMATION CONTACT:

Regarding the guideline: Nancy B. Sager, Center for Drug Evaluation and Research (HFD–357), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5721.

Regarding the ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In the **Federal Register** of March 7, 1996 (61 FR 9310), FDA published a draft tripartite guideline entitled ''Guideline for the Photostability Testing of New Drug Substances and Products.'' The notice gave interested persons an opportunity to submit comments by June 5, 1996.

After consideration of the comments received and revisions to the guideline, a final draft of the guideline was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies at the ICH meeting held on November 5, 1996.

In the **Federal Register** of September 22, 1994 (59 FR 48754), the agency published a guideline entitled ''Stability Testing of New Drug Substances and Products.'' The guideline addresses the generation of stability information for submission to FDA in new drug applications for new molecular entities and associated drug products. In the discussion of ''stress testing'' for both drug substances and drug products, the guideline states that ''light testing'' should be an integral part of stress testing and will be considered in a separate ICH document.

This guideline is an annex to that guideline and describes the basic testing protocol for photostability testing of new drug substances and products in original new drug application submissions.

This guideline represents the agency's current thinking on photostability testing of new drug substances and products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

As with all of FDA's guidelines, the public is encouraged to submit written comments with new data or other new information pertinent to this guideline. The comments in the docket will be periodically reviewed, and, where appropriate, the guideline will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guideline is available on the Internet using the World Wide Web (WWW) (http://www.fda.gov/cder/guidance.htm).

The text of the guideline follows:

Guideline for the Photostability Testing of New Drug Substances and Products

I. General

The ICH Harmonized Tripartite Guideline on Stability Testing of New Drug Substances and Products (hereafter referred to as the parent guideline) notes that light testing should be an integral part of stress testing. This document is an annex to the parent guideline and addresses the recommendations for photostability testing.

A. Preamble

The intrinsic photostability characteristics of new drug substances and products should be evaluated to demonstrate that, as appropriate, light exposure does not result in unacceptable change. Normally, photostability testing is carried out on a single batch of material selected as described under ''Selection of Batches'' in the parent guideline. Under some circumstances these studies should be repeated if certain variations and changes are made to the

product (e.g., formulation, packaging). Whether these studies should be repeated depends on the photostability characteristics determined at the time of initial filing and the type of variation and/or change made.

The guideline primarily addresses the generation of photostability information for submission in registration applications for new molecular entities and associated drug products. The guideline does not cover the photostability of drugs after administration (i.e., under conditions of use) and those applications not covered by the parent guideline. Alternative approaches may be used if they are scientifically sound and justification is provided.

A systematic approach to photostability testing is recommended covering, as appropriate, studies such as:

(i) Tests on the drug substance;

(ii) Tests on the exposed drug product outside of the immediate pack; and if necessary;

(iii) Tests on the drug product in the immediate pack; and if necessary;

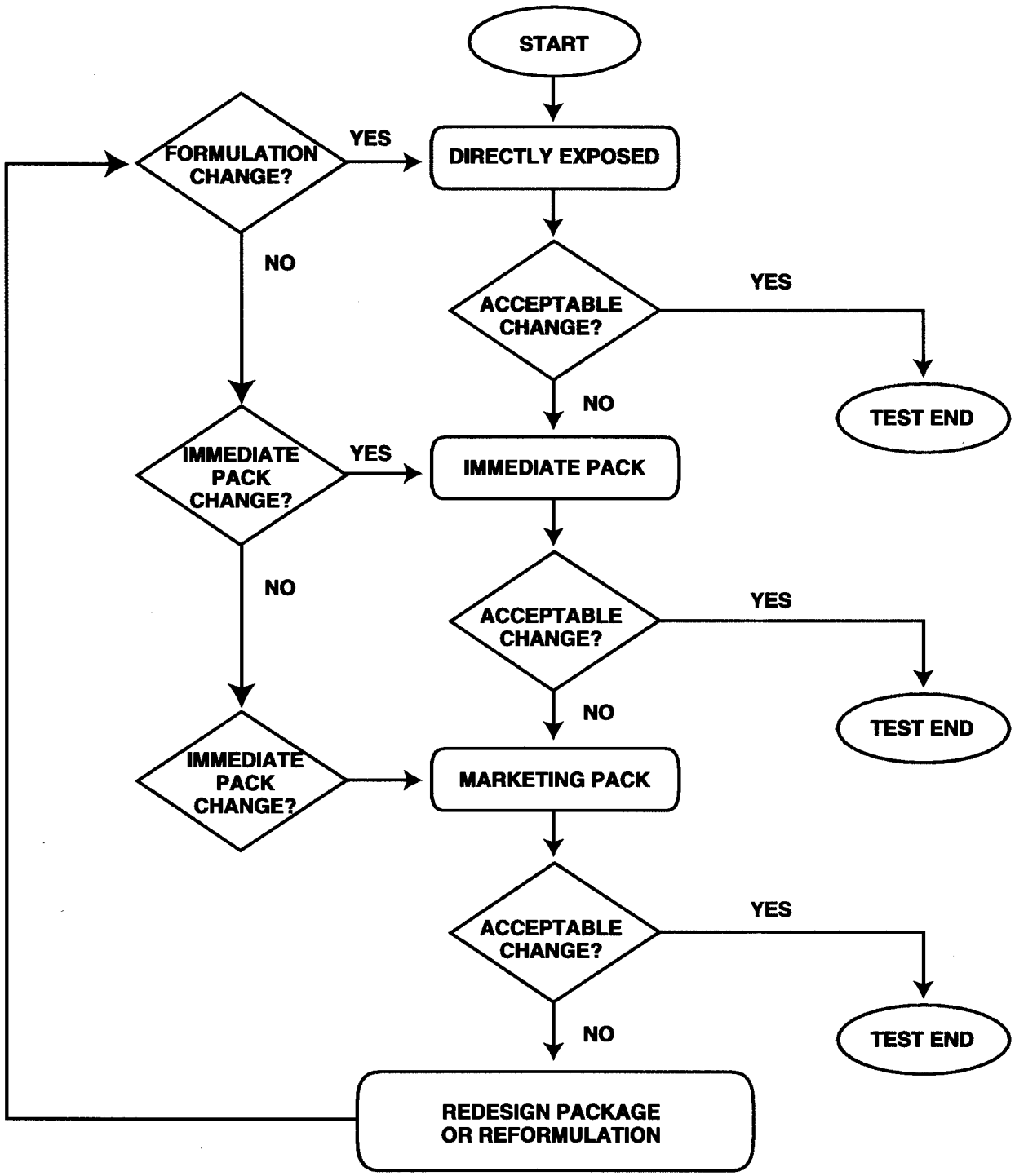
(iv) Tests on the drug product in the marketing pack.

The extent of drug product testing should be established by assessing whether or not acceptable change has occurred at the end of the light exposure testing as described in the Decision Flow Chart for Photostability Testing of Drug Products. Acceptable change is change within limits justified by the applicant.

The formal labeling requirements for photolabile drug substances and drug products are established by national/regional requirements.

BILLING CODE 4160–01–F

DECISION FLOW CHART FOR PHOTOSTABILITY TESTING OF DRUG PRODUCTS



BILLING CODE 4160–01–C

B. Light Sources

The light sources described below may be used for photostability testing. The applicant should either maintain an appropriate control of temperature to minimize the effect of localized temperature changes or include a dark control in the same environment unless otherwise justified. For both options 1 and 2, a pharmaceutical manufacturer/applicant may rely on the spectral distribution specification of the light source manufacturer.

Option 1

Any light source that is designed to produce an output similar to the D65/ID65 emission standard such as an artificial daylight fluorescent lamp combining visible and ultraviolet (UV) outputs, xenon, or metal halide lamp. D65 is the internationally recognized standard for outdoor daylight as defined in ISO 10977 (1993). ID65 is the equivalent indoor indirect daylight standard. For a light source emitting significant radiation below 320 nanometers (nm), an appropriate filter(s) may be fitted to eliminate such radiation.

Option 2

For option 2 the same sample should be exposed to both the cool white fluorescent and near ultraviolet lamp.

1. A cool white fluorescent lamp designed to produce an output similar to that specified in ISO 10977 (1993); and

2. A near UV fluorescent lamp having a spectral distribution from 320 nm to 400 nm with a maximum energy emission between 350 nm and 370 nm; a significant proportion of UV should be in both bands of 320 to 360 nm and 360 to 400 nm.

C. *Procedure*

For confirmatory studies, samples should be exposed to light providing an overall illumination of not less than 1.2 million lux hours and an integrated near ultraviolet energy of not less than 200 watt hours/square meter to allow direct comparisons to be made between the drug substance and drug product.

Samples may be exposed side-by-side with a validated chemical actinometric system to ensure the specified light exposure is obtained, or for the appropriate duration of time when conditions have been monitored using calibrated radiometers/lux meters. An example of an actinometric procedure is provided in the Annex.

If protected samples (e.g., wrapped in aluminum foil) are used as dark controls to evaluate the contribution of thermally induced change to the total observed change, these should be placed alongside the authentic sample.

II. Drug Substance

For drug substances, photostability testing should consist of two parts: Forced degradation testing and confirmatory testing.

The purpose of forced degradation testing studies is to evaluate the overall photosensitivity of the material for method development purposes and/or degradation pathway elucidation. This testing may involve the drug substance alone and/or in simple solutions/suspensions to validate the analytical procedures. In these studies, the samples should be in chemically inert and transparent containers. In these forced degradation studies, a variety of exposure conditions may be used, depending on the photosensitivity of the drug substance involved and the intensity of the light sources used. For development and validation purposes, it is appropriate to limit exposure and end the studies if extensive decomposition occurs. For photostable materials, studies may be terminated after an appropriate exposure level has been used. The design of these experiments is left to the applicant's discretion although the exposure levels used should be justified.

Under forcing conditions, decomposition products may be observed that are unlikely to be formed under the conditions used for confirmatory studies. This information may be useful in developing and validating suitable analytical methods. If in practice it has been demonstrated they are not formed in the confirmatory studies, these degradation products need not be examined further.

Confirmatory studies should then be undertaken to provide the information necessary for handling, packaging, and labeling (see section I.C., Procedure, and II.A., Presentation of Samples, for information on the design of these studies).

Normally, only one batch of drug substance is tested during the development phase, and then the photostability characteristics should be confirmed on a single batch selected as described in the parent guideline if the drug is clearly photostable or photolabile. If the results of the confirmatory study are equivocal, testing of up to two additional batches should be conducted. Samples should be selected as described in the parent guideline.

A. Presentation of Samples

Care should be taken to ensure that the physical characteristics of the samples under test are taken into account and efforts should be made, such as cooling and/or placing the samples in sealed containers, to ensure that the effects of the changes in physical states such as sublimation, evaporation, or melting are minimized. All such precautions should be chosen to provide minimal interference with the exposure of samples under test. Possible interactions between the samples and any material used for containers or for general protection of the sample should also be considered and eliminated wherever not relevant to the test being carried out.

As a direct challenge for samples of solid drug substances, an appropriate amount of sample should be taken and placed in a suitable glass or plastic dish and protected with a suitable transparent cover if considered necessary. Solid drug substances should be spread across the container to give a thickness of typically not more than 3 millimeters. Drug substances that are liquids should be exposed in chemically inert and transparent containers.

B. Analysis of Samples

At the end of the exposure period, the samples should be examined for any changes in physical properties (e.g., appearance, clarity or color of solution) and for assay and degradants by a method suitably validated for products likely to arise from photochemical degradation processes.

Where solid drug substance samples are involved, sampling should ensure that a representative portion is used in individual tests. Similar sampling considerations, such as homogenization of the entire sample, apply to other materials that may not be homogeneous after exposure. The analysis of the exposed sample should be performed concomitantly with that of any protected samples used as dark control if these are used in the test.

C. Judgment of Results

The forced degradation studies should be designed to provide suitable information to develop and validate test methods for the confirmatory studies. These test methods should be capable of resolving and detecting photolytic degradants that appear during the confirmatory studies. When evaluating the results of these studies, it is important to recognize that they form part of the stress testing and are not therefore designed to establish qualitative or quantitative limits for change.

The confirmatory studies should identify precautionary measures needed in manufacturing or in formulation of the drug product, and if light resistant packaging is needed. When evaluating the results of confirmatory studies to determine whether change due to exposure to light is acceptable, it is important to consider the results from other formal stability studies in order to assure that the drug will be within justified limits at time of use (see the relevant ICH Stability and Impurity Guidelines).

III. Drug Product

Normally, the studies on drug products should be carried out in a sequential manner starting with testing the fully exposed product then progressing as necessary to the product in the immediate pack and then in the marketing pack. Testing should progress until the results demonstrate that the drug product is adequately protected from exposure to light. The drug product should be exposed to the light conditions described under the procedure in section I.C.

Normally, only one batch of drug product is tested during the development phase, and then the photostability characteristics should be confirmed on a single batch selected as described in the parent guideline if the product is clearly photostable or photolabile. If the results of the confirmatory study are equivocal, testing of up to two additional batches should be conducted.

For some products where it has been demonstrated that the immediate pack is completely impenetrable to light, such as aluminum tubes or cans, testing should normally only be conducted on directly exposed drug product.

It may be appropriate to test certain products, such as infusion liquids or dermal creams, to support their photostability in-use. The extent of this testing should depend on and relate to the directions for use, and is left to the applicant's discretion.

The analytical procedures used should be suitably validated.

A. Presentation of Samples

Care should be taken to ensure that the physical characteristics of the samples under test are taken into account and efforts, such as cooling and/or placing the samples in sealed containers, should be made to ensure that the effects of the changes in physical states are minimized, such as sublimation, evaporation, or melting. All such precautions should be chosen to provide minimal interference with the irradiation of samples under test. Possible interactions between the samples and any material used for containers or for general protection of the sample should also be considered and eliminated wherever not relevant to the test being carried out.

Where practicable when testing samples of the drug product outside of the primary pack, these should be presented in a way similar to the conditions mentioned for the drug substance. The samples should be positioned to provide maximum area of exposure to the light source. For example, tablets, capsules, should be spread in a single layer.

If direct exposure is not practical (e.g., due to oxidation of a product), the sample should be placed in a suitable protective inert transparent container (e.g., quartz).

If testing of the drug product in the immediate container or as marketed is needed, the samples should be placed horizontally or transversely with respect to the light source, whichever provides for the most uniform exposure of the samples. Some adjustment of testing conditions may have to be made when testing large volume containers (e.g., dispensing packs).

B. Analysis of Samples

At the end of the exposure period, the samples should be examined for any changes in physical properties (e.g., appearance, clarity, or color of solution, dissolution/disintegration for dosage forms such as capsules) and for assay and degradants by a method suitably validated for products likely to arise from photochemical degradation processes.

When powder samples are involved, sampling should ensure that a representative portion is used in individual tests. For solid oral dosage form products, testing should be conducted on an appropriately sized composite of, for example, 20 tablets or capsules. Similar sampling considerations, such as homogenization or solubilization of the entire sample, apply to other materials that may not be homogeneous after exposure (e.g., creams, ointments, suspensions). The analysis of the exposed sample should be performed concomitantly with that of any protected samples used as dark controls if these are used in the test.

C. Judgment of Results

Depending on the extent of change, special labeling or packaging may be needed to mitigate exposure to light. When evaluating the results of photostability studies to determine whether change due to exposure to light is acceptable, it is important to consider the results obtained from other formal stability studies in order to assure that the product will be within proposed specifications during the shelf life (see the relevant ICH Stability and Impurity Guidelines).

IV. Annex

A. Quinine Chemical Actinometry

The following provides details of an actinometric procedure for monitoring exposure to a near UV flourescent lamp (based on FDA/National Institute of Standards and Technology study). For other light sources/actinometric systems, the same approach may be used, but each actinometric system should be calibrated for the light source used.

Prepare a sufficient quantity of a 2 percent weight/volume aqueous solution of quinine monohydrochloride dihydrate (if necessary, dissolve by heating).

Option 1

Put 10 milliliters (mL) of the solution into a 20 mL colorless ampoule, seal it hermetically, and use this as the sample. Separately, put 10 mL of the solution into a 20 mL colorless ampoule (see note 1), seal it hermetically, wrap in aluminum foil to protect completely from light, and use this as the control. Expose the sample and control to the light source for an appropriate number of hours. After exposure determine the absorbances of the sample (A_T) and the control (A_O) at 400 nm using a 1 centimeter (cm) pathlength. Calculate the change in absorbance, $\Delta A = A_T - A_O$. The length of exposure should be sufficient to ensure a change in absorbance of at least 0.9.

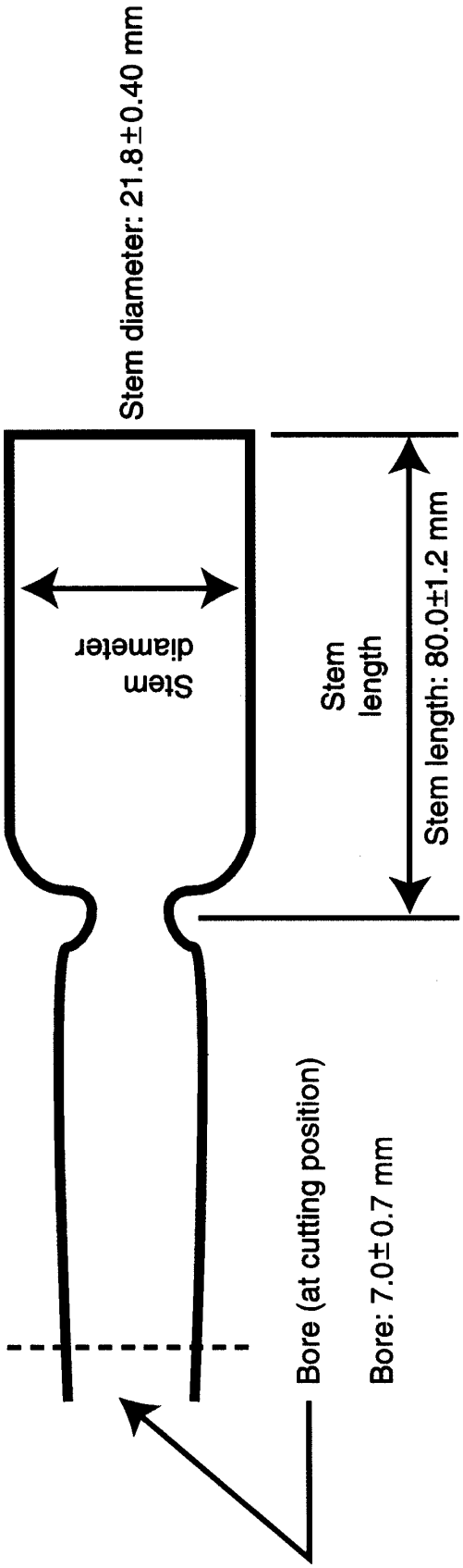
Option 2

Fill a 1 cm quartz cell and use this as the sample. Separately fill a 1 cm quartz cell, wrap in aluminum foil to protect completely from light, and use this as the control. Expose the sample and control to the light source for an appropriate number of hours. After exposure determine the absorbances of the sample (A_T) and the control (A_O) at 400 nm. Calculate the change in absorbance, $\Delta A = A_T - A_O$. The length of exposure should be sufficient to ensure a change in absorbance of at least 0.5.

Alternative packaging configurations may be used if appropriately validated. Alternative validated chemical actinometers may be used.

Note 1: Shape and Dimensions (See Japanese Industry Standard (JIS) R3512 (1974) for ampoule specifications)

BILLING CODE 4160–01–F



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V. Glossary

• Immediate (primary) pack is that constituent of the packaging that is in direct contact with the drug substance or drug product, and includes any appropriate label.

• Marketing pack is the combination of immediate pack and other secondary packaging such as a carton.

• Forced degradation testing studies are those undertaken to degrade the sample deliberately. These studies, which may be undertaken in the development phase normally on the drug substances, are used to evaluate the overall photosensitivity of the material for method development purposes and/or degradation pathway elucidation.

• Confirmatory studies are those undertaken to establish photostability characteristics under standardized conditions. These studies are used to identify precautionary measures needed in manufacturing or formulation and whether light-resistant packaging and/or special labeling is needed to mitigate exposure to light. For the confirmatory studies, the batch(es) should be selected according to batch selection for long-term and accelerated testing which is described in the parent guideline.

VI. References

Yoshioka, S., et al., ''Quinine Actinometry as a Method for Calibrating Ultraviolet Radiation Intensity in Light-Stability Testing of Pharmaceuticals,'' *Drug Development and Industrial Pharmacy*, 20(13):2049–2062, 1994.

Dated: May 2, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–12850 Filed 5–15–97; 8:45 am]

BILLING CODE 4160–01–F

Friday
May 16, 1997

Part III

Department of Housing and Urban Development

24 CFR Part 5, Et al.

Admission Preferences, Public Housing Development, and Public Housing Modernization Regulations: Technical Amendments; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 941, 950, and 968

[Docket No. FR–4166–F–01]

RIN 2501–AC38

Admission Preferences, Public Housing Development, and Public Housing Modernization Regulations: Technical Amendments

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule: technical amendment.

SUMMARY: This final rule makes technical amendments to several of HUD's regulations that affect its assisted housing programs. These amendments make the following changes: revise language in a rule governing admission preferences in the assisted housing programs to make it more general, to cover all the Section 8 Housing Assistance Payments programs it was intended to cover, as evidenced by the Section 8 regulations that cross-reference the preferences rule; restore language regarding ''total development cost'' that was removed from regulations covering the public housing development program when an interim rule expired on May 29, 1995; restore language stating review criteria for performance under modernization standards; and conform the requirements for paid-off and conveyed Turnkey III units in public housing to those in the Indian housing program. These changes rectify problems that occurred inadvertently in previous rulemakings.

EFFECTIVE DATE: June 16, 1997.

FOR FURTHER INFORMATION CONTACT: For the public housing program, contact Bill Flood, Director, Office of Capital Improvements, Office of Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (voice): (202) 708–1640, ext. 4185. (This is not a toll-free number.) For hearing-and speech-impaired persons, this number may be accessed via text telephone by dialing the Federal Information Relay Service at 1–800–877–8339.

For the Section 8 programs, contact Gerald J. Benoit, Director, Operations Division, Office of Public and Assisted Housing Operations, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (voice): (202) 708–0477, ext. 4069. (This is not a toll-free number.) For hearing-and speech-impaired persons, this number may be accessed via text telephone by dialing the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On November 29, 1993, an interim rule was published (58 FR 62522), which revised the definition of ''Total development cost'' found in the public housing development regulations (24 CFR part 941) and the Indian housing regulations (located then at 24 CFR part 905, now at part 950). That rule also revised other sections of those regulations specifying how the total development cost concept was used to limit the maximum approvable cost for a project. That rule contained an expiration date of May 29, 1995.

Having lost track of the existence of that expiration date for these provisions and, having further revised the sections in the meantime, the Department failed to realize that the definitions and other affected sections might return to their pre-1993 status. In the case of the public housing development regulations, the definition of ''Total development cost'' was omitted when title 24 of the Code of Federal Regulations was published, in accordance with the expiration date. In the case of the Indian housing regulations, the definition remains.

A second prior rulemaking that occasioned the need for this rule is the final rule published on March 6, 1996 (61 FR 9040), consolidating the provisions governing admissions preferences into a single part, 24 CFR part 5, subpart E. Although the terms of the 1997 appropriations for HUD continue the suspension of application of the Federal preferences to HUD programs through September 30, 1997, the Department feels it necessary to correct the rule that will apply on October 1, 1997, absent additional Congressional action on this subject.

The consolidated preferences rule states, at 24 CFR 5.410(d)(1)(i), that its provision concerning consideration of matching the characteristics of the unit with the characteristics of the applicant family applies to ''developments administered under the Section 8 New Construction and Substantial Rehabilitation programs and the public housing program''. The Section 8 program regulations, on the other hand, provide (at 24 CFR 882.514(a)(1) and 882.514(b), 886.132 and 886.337) that the preferences provisions of 24 CFR part 5 apply to the Section 8 Moderate Rehabilitation and Section 8 HUD-Held and HUD-Owned projects. The intent of the consolidation was to apply the provision (§ 5.410(d)(1)(i)) that requires matching characteristics of a unit with characteristics of applicants (including accessibility features and such needs), along with other preferences provisions, to all Section 8 programs where the responsible entity is selecting a family for a particular unit. This technical amendment corrects this oversight in the listing of covered Section 8 programs by changing the above-quoted language to, ''developments administered under the Section 8 programs and * * * public housing''.

A third rulemaking that occasioned the need for this rule is a final rule published on October 18, 1996 (61 FR 54492) that consolidated provisions dealing with income and rent applicable to several assisted housing programs from 24 CFR parts 813 and 913 into one subpart of 24 CFR part 5. It preserved language in the new § 5.617(b)(3) referring to the purposes of this ''part,'' when it should have modified the language to fit the new context of its placement in a ''subpart.'' An old typographical error in that same section was preserved from the former location, and is being corrected in this amendment.

A fourth rulemaking that is a foundation for this rule is a final rule published on March 5, 1996. That rule streamlined the modernization provisions of the Indian housing and public housing programs. However, in one respect it used different language, inadvertently. This rule conforms the language of the public housing rule (§ 968.102(b)) to the language of the Indian housing rule with respect to the treatment of paid-off Turnkey III units. (See § 950.602(b) at 61 FR 8721.) It also conforms the language of the public housing rule to the language of the Indian housing rule with respect to increased value of a homeownership unit caused by its substantial rehabilitation by adding the word ''not'' to paragraph § 968.112(d)(3)(ii) before the phrase, ''by an automatic increase in its selling price.'' (See §§ 950.608(d)(3)(ii) and 968.112(d)(3)(ii) at 61 FR 8724 and 8739, respectively).

In addition, it has come to the Department's attention that performance standards were omitted from both the Indian housing and public housing rules in that rulemaking. This rule corrects that omission by adding new provisions §§ 950.660(a)(3) and 968.335(a)(3), which describe what HUD means by ''reasonable progress'' in implementing the HA's modernization plan.

II. Findings and Certifications

A. Justification for Final Rule

The Department generally publishes a rule for public comment before issuing a rule for effect, in accordance with its regulations on rulemaking in 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1).

This final rule merely makes technical amendments to existing rules to restore language removed inadvertently, and to correct language to remove an apparent inconsistency between program regulations and a consolidated rule. Implementation of the rule's provisions is needed as soon as possible to correct existing rules in effect. Therefore, the Department has determined that good cause exists to omit prior public procedure for this final rule because such delay would be contrary to the public interest and unnecessary.

B. Impact on the Environment

This rule does not in itself have an environmental impact. This rule merely makes technical changes to existing rules to restore provisions removed inadvertently; to correct language to provide consistency between program regulations, consistent with their original intent; and to correct editorial errors. It does not alter the environmental effect of the regulations. At the time of development of the original program regulations whose language is restored or corrected by this rule, Findings of No Significant Impact with respect to the environment were made in accordance with HUD regulations in 24 CFR part 50 and section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The findings remain applicable to this rule and are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

C. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule does not have significant impact 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, the rule is not subject to review under the Order. The rule only makes minor technical changes to existing rules.

D. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities. This rule makes only technical amendments to clarify existing regulations.

E. Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Catalog

The Catalog of Federal Domestic Assistance number for the programs affected by this rule is 14.850.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Grant programs—low and moderate income housing, Indians, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

24 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

24 CFR Part 950

Aged, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 968

Grant programs—housing and community development, Indians, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, parts 5, 941, 950, and 968 of title 24 of the Code of Federal Regulations are amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 101r–1; 42 U.S.C. 1436a, 3535(d), 3543, and 3544.

2. In § 5.410, paragraph (d)(1)(i), the first sentence is revised to read as follows:

§ 5.410 Selection preferences.

* * * * *

(d) * * *

(1) * * *

(i) *Characteristics of the unit.* For developments administered under the Section 8 programs and for public housing, the responsible entity may, in selecting a family for a particular unit, match other characteristics of the applicant family with the type of unit available, e.g., number of bedrooms. * * *

* * * * *

3. In § 5.617, paragraph (b)(3) is revised to read as follows:

§ 5.617 Reexamination and verification.

* * * * *

(b) * * *

(3) The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of this subpart or applying for assistance.

* * * * *

PART 941—PUBLIC HOUSING DEVELOPMENT

4. The authority citation for part 941 continues to read as follows:

Authority: 42 U.S.C. 1437b, 1437c, 1437g and 3535(d).

5. Section 941.103 is amended by adding a definition of ''Total development cost'' in alphabetical order at the end of the definitions, to read as follows:

§ 941.103 Definitions.

* * * * *

Total development cost (TDC). The sum of all HUD-approved costs for planning (including proposal preparation), administration, site acquisition, relocation, demolition, construction and equipment, interest and carrying charges, on-site streets and utilities, non-dwelling facilities, a

contingency allowance, insurance premiums, off-site facilities, any initial operating deficit, and other costs necessary to develop the project. The total development cost in the proposal, when reviewed and approved by HUD, becomes the maximum total development cost stated in the ACC. Upon completion of the project, the actual development cost is determined, and this becomes the maximum total development cost of the project for purposes of the ACC. The maximum total development cost excludes costs funded from donations.

PART 950—INDIAN HOUSING PROGRAMS

6. The authority citation for part 950 is revised to read as follows:

Authority: 25 U.S.C. 450e(b), 42 U.S.C. 1437aa–1437ee, and 3535(d).

7. In § 950.660, paragraph (a)(3) is revised to read as follows:

§ 950.660 HUD review of IHA performance.

(a) * * *

(3) *Reasonable progress.* HUD shall determine whether the IHA has satisfied, or has made reasonable progress towards satisfying, the following performance standards:

(i) Conformity with its comprehensive plan, including its annual statement and latest HUD-approved five-year action plan, and other statutory and regulatory requirements;

(ii) Continuing capacity to carry out its comprehensive plan in a timely manner and expend the annual grant funds; and

(iii) Reasonable progress toward bringing all of its developments to the modernization and energy conservation standards and toward implementing the work specified in the annual statement or five-year action plan designed to address management deficiencies.

* * * * *

PART 968—PUBLIC HOUSING MODERNIZATION

8. The authority citation for part 968 continues to read as follows:

Authority: 42 U.S.C. 1437d, 1437*l*, and 3535(d).

9. In § 968.102, paragraph (b) is revised to read as follows:

§ 968.102 Special requirements for Turnkey III developments.

* * * * *

(b) *Eligibility of paid-off and conveyed units for assistance.*—(1) *Paid-off units.* A Turnkey III unit that is paid off but has not been conveyed at the time the CIAP application or CGP Annual Submission is submitted, is eligible for any physical improvement under § 968.112(d).

(2) *Conveyed units.* Where modernization work has been approved before conveyance, the PHA may complete the work even if title to the unit is subsequently conveyed before the work is completed. However, once conveyed, the unit is not eligible for additional or future assistance. A PHA shall not use funds provided under this part for the purpose of modernizing units if the modernization work was not approved before conveyance of title.

* * * * *

§ 968.112 [Amended]

10. Section 968.112 is amended by adding to the last sentence of paragraph (d)(3)(ii) the word ''not'' before the phrase ''by an automatic increase in its selling price.''

11. In § 968.335, paragraph (a)(3) is revised to read as follows:

§ 968.335 HUD review of PHA performance.

(a) * * *

(3) *Reasonable progress.* HUD shall determine whether the PHA has satisfied, or has made reasonable progress towards satisfying, the following performance standards:

(i) Conformity with its comprehensive plan, including its annual statement and latest HUD-approved five-year action plan, and other statutory and regulatory requirements;

(ii) Continuing capacity to carry out its comprehensive plan in a timely manner and expend the annual grant funds; and

(iii) Reasonable progress toward bringing all of its developments to the modernization and energy conservation standards and toward implementing the work specified in the annual statement or five-year action plan designed to address management deficiencies.

* * * * *

Dated: May 7, 1997.

Andrew Cuomo,

Secretary.

[FR Doc. 97–12842 Filed 5–15–97; 8:45 am]

BILLING CODE 4210–32–P

Friday
May 16, 1997

Part IV

Department of Education

34 CFR Part 668

Student Assistance General Provisions; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AC36

Student Assistance General Provisions

AGENCY: Department of Education.
ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Student Assistance General Provisions to add the Office of Management and Budget (OMB) control numbers to certain sections of these regulations. These sections contain information collection requirements approved by OMB. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The Secretary takes this action to inform the public that these regulations have been approved and affected parties must comply with them.

EFFECTIVE DATE: These regulations are effective on July 1, 1997.

FOR FURTHER INFORMATION CONTACT: Paula Husselmann, U.S. Department of Education, 600 Independence Avenue, S.W., (Room 3053, ROB–3) Washington, D.C. 20202. Telephone: (202) 708–8242. 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: Final regulations for the Student Assistance General Provisions were published in the **Federal Register** on November 27, 1996 (61 FR 60490 (Record Retention)), November 29, 1996 (61 FR 60565 (Financial Responsibility)), and November 29, 1996 (61 FR 60578 (Project EASI/Cash Management)). Compliance with information collection requirements in certain sections of these regulations was delayed until those requirements were approved by OMB under the Paperwork Reduction Act of 1995. On January 17, 1997, OMB approved the information collection requirements for the record retention regulations, the factors of financial responsibility regulations, the standards of administrative capability, the compliance and financial statement audit regulations. On January 27, OMB approved the information collection requirements for the EASI/cash management regulations. The information collection requirements in these regulations will become effective with all of the other provisions of the regulations on July 1, 1997.

Waiver of Proposed Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined that, under 5 U.S.C. 553(b)(B), public comment on the regulations is unnecessary and contrary to the public interest.

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: May 9, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

§§ 668.15, 668.16, 668.23, 668.24 [Amended]

2. Sections 668.15, 668.16, 668.23, and 668.24 are amended by adding the OMB control number following the sections to read as follows: ''(Approved by the Office of Management and Budget under control number 1840–0537)''

§§ 668.165, 668.167 [Amended]

3. Sections 668.165 and 668.167 are amended by adding the OMB control number following the sections to read as follows: ''(Approved by the Office of Management and Budget under control number 1840–0697)''

[FR Doc. 97–12879 Filed 5–15–97; 8:45 am]

BILLING CODE 4000–01–P

Friday
May 16, 1997

Part V

Department of Education

Reopening of Closing Date for Receipt of Application for Designation as an Eligible Institution for Fiscal Year 1997; Eligibility for the Strengthening Institutions, Hispanic-Serving Institutions, and Endowment Challenge Grant Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.031A, CFDA No. 84.031G]

Reopening of Closing Date for Receipt of Applications for Designation as an Eligible Institution for Fiscal Year 1997; Eligibility for the Strengthening Institutions, Hispanic-Serving Institutions, and Endowment Challenge Grant Programs

SUMMARY: On November 27, 1996 and January 13, 1997, notices were published in the **Federal Register** (61 FR 60254–60265 and 62 FR 1739–1740) that established closing dates for transmittal of applications for the FY 1997 designation of eligible institutions for the Strengthening Institutions, Hispanic-Serving Institutions, and Endowment Challenge Grant programs. The purpose of this notice is to reopen the closing date for the transmittal of applications and to notify applicants of an error in the application package. This action is taken to give institutions additional time to apply for the first time for designation as an eligible institution under these programs in FY 1997 or to correct any previous application based on the erroneous information in the application package.

DEADLINE DATE FOR TRANSMITTAL OF NEW APPLICATIONS: June 6, 1997.

SUPPLEMENTARY INFORMATION: One criterion that an institution must satisfy to qualify as an eligible institution under the Strengthening Institutions, Hispanic-Serving Institutions, and Endowment Challenge Grant Programs is the needy student requirement set forth in section 312 (b)(1)(A) of the Higher Education Act of 1965, as amended.

However, an institution may request a waiver of that requirement if at least 30 percent of its enrollment consisted of students from low-income families.

Appendix 1 on page 6 of the application booklet contained incorrect Base Year Low-Income Levels. The correct levels are as follows:

Size of family unit	Contiguous 48 states, the District of Columbia, and outlying jurisdictions	Hawaii	Alaska
1	$11,040	$13,800	$12,705
2	14,760	18,450	16,980
3	18,480	23,100	21,255
4	22,200	27,750	25,530
5	25,920	32,400	29,805
6	29,640	37,050	34,080
7	33,360	41,700	38,355
8	37,080	46,350	42,360

*The figures shown under family income represent amounts equal to 150% of the family income levels established by the U.S. Bureau of the Census for determining poverty status. These levels were published by the U.S. Department of Health and Human Services in the FEDERAL REGISTER on February 10, 1994 (59 FR 6277–6278).

For family units with more than eight members, add the following amount for each additional family member: 3,720 for the contiguous 48 states, the District of Columbia and outlying jurisdictions; 4,650 for Alaska; and 4,275 for Hawaii.

As a result of the inaccurate table, institutions may have been discouraged from applying for a waiver, or institutions may have applied for and been denied a waiver based upon that inaccurate table. Under the reopened application period, these institutions may apply or reapply for a waiver of the needy student criterion based on the corrected low-income levels table.

In addition, any institution that seeks for the first time to be designated as eligible in FY 1997 may apply under this reopening of the closing date. Institutions should base any application for a waiver of the needy student criterion on the corrected Base Year Low-Income Levels table in this notice.

FOR APPLICATIONS OR INFORMATION CONTACT: Strengthening Institutions Program, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 600 Independence Avenue, S.W., (Suite CY–80, Portals Building), Washington, DC 20202–5335. Telephone: (202) 708–8816 or 708–8839. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov/); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Authority: 20 U.S.C. 1057, 1059c and 1065a.

Dated: May 9, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–12878 Filed 5–15–97; 8:45 am]

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Federal Register

Friday
May 16, 1997

Part VI

Environmental Protection Agency

40 CFR Part 180

Plant-Pesticides, Supplemental Notice; Proposed Rule

Plant-Pesticides; Nucleic Acids; Proposed Rule

Plant-Pesticides; Viral Coat Proteins; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300368A; FRL–5717–2]

RIN 2070–AC02

Plant-Pesticides; Supplemental Notice of Proposed Rulemaking

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This document announces the availability of information for additional public comment regarding a proposed exemption from the requirement of a tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA) for pesticidal substances that are a component of certain plant-pesticides, i.e., those plant-pesticides that are derived from closely related plants. Comments on this document may also affect EPA's final determination on a proposed exemption under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for this same category of plant-pesticides. In 1994, EPA proposed to exempt from the requirement of a tolerance the pesticidal substance portion of plant-pesticides moved between closely related plants because a tolerance would not be necessary to protect the public health. Since publication of the proposal, Congress enacted the Food Quality Protection Act (FQPA) which amended FFDCA and FIFRA. EPA is issuing this document today to provide the public with an opportunity to comment on EPA's analysis of how certain FQPA amendments to FFDCA and FIFRA apply to the proposed exemption from the requirement of a tolerance for pesticidal substances moved between closely related plants. EPA believes that it considered most of the substantive issues associated with the FQPA amendments when it issued the proposals in 1994. EPA is thus, in this document, specifically seeking comment only on its evaluation of the requirements imposed by FQPA that the Agency did not address in the proposals.

DATES: Comments, identified by the docket control number ''OPP–300368A,'' must be received on or before June 16, 1997.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person deliver comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under Unit IV.D. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Elizabeth Milewski, Office of Science, Coordination and Policy, Office of Prevention, Pesticides and Toxic Substances (7101), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260-6900, e-mail address: milewski.elizabeth@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA issued in the November 23, 1994 **Federal Register** a package of five separate **Federal Register** proposals (59 FR 60496, 60519, 60535, 60542 and 60545) (FRL–4755–2, FRL–4755–3, FRL–4758–8, FRL–4755–5, and FRL–4755–4) which together described EPA's approach to substances produced in plants that enable the plants to resist pests or disease. EPA's package of proposals indicated that these substances are pesticides under section 2 of FIFRA (7 U.S.C. 136(u)) if they are ''intended for preventing, destroying, repelling, or mitigating any pest'' or if they are ''. . . intended for use as a plant regulator, defoliant, or desiccant'' regardless of whether the pesticidal capabilities evolved in the plants or were introduced by breeding or through the techniques of modern biotechnology. These substances, and the genetic material necessary to produce them, were designated ''plant-pesticides'' by EPA in the November 23, 1994 **Federal Register** notices. The proposals defined a ''plant-pesticide'' as ''a pesticidal substance that is produced in a living plant and the genetic material necessary for the production of the pesticidal substance where the pesticidal substance is intended for use in the living plant'' (59 FR at 60534).

One of the five documents (59 FR 60535) proposed to exempt the pesticidal substance portion of plant-pesticides moved between closely related plants from the FFDCA (21 U.S.C. 346a) requirement of a tolerance based upon an evaluation of the potential for new dietary exposures to the substances when they are produced in plants, or in plant parts, used as food or feed. EPA proposed in the same **Federal Register** (59 FR at 60537) to define closely related plants as plants that are sexually compatible. In the proposal, sexually compatible, when referring to plants, means capable of forming a viable zygote through the fusion of two gametes, including the use of bridging crosses and/or wide crosses. EPA stated in the proposed exemption that a tolerance is not necessary to protect the public health for these pesticidal substances because no new dietary exposures are likely to occur for pesticidal substances moved between sexually compatible plants. For pesticidal substances in this category, many years of experience of human use suggest that under normal dietary conditions these pesticidal substances present negligible risk. Specifically, EPA proposed that ''residues of pesticidal substances produced in living plants as plant-pesticides are exempt from the requirement of a tolerance if the genetic material that encodes for a pesticidal substance or leads to the production of a pesticidal substance is derived from plants that are sexually compatible with the recipient plant and has never been derived from a source that is not sexually compatible with the recipient plant'' (59 FR at 60542).

This supplemental notice addresses the pesticidal substance portion of plant-pesticides produced in food plants. A companion supplemental notice issued elsewhere in today's **Federal Register** addresses the proposed exemption for the nucleic acid component of plant-pesticides with regard to the FQPA amendments to FFDCA.

Because FQPA modified FIFRA (7 U.S.C. 136 *et seq*.) by incorporating the FFDCA safety standard into the FIFRA test for determining whether a pesticide poses an unreasonable adverse effect, comments on these supplemental notices may also affect EPA's final determination on the proposed exemption (59 FR 60519) under FIFRA for plant-pesticides that are derived from plants sexually compatible with the recipient plant.

EPA is issuing this supplemental notice, as well as the companion supplemental notice on nucleic acids to ensure that the public has had adequate opportunity to comment on certain new considerations raised by the FQPA amendments to FFDCA as these considerations relate to the proposed exemption from tolerance for residues of pesticidal substances derived from sexually compatible plants. In evaluating a pesticide chemical residue for exemption from FFDCA tolerance requirements, EPA must now explicitly address certain factors, and make a determination that there is a reasonable certainty that aggregate exposure to the

residue will cause no harm to the public. The factors to be considered are iterated in Unit II. of this supplemental notice. EPA's evaluation of these factors relative to the proposed exemption (59 FR 60535) is contained in Unit IV. of this supplemental notice. Consistent with FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. In today's supplemental notice, EPA requests comment only on the new conclusions identified in Unit V.C. of this supplemental notice.

In light of FQPA, EPA is engaged in a process, including consultation with registrants, states, and other interested stakeholders, to make decisions on the new policies and procedures that will be appropriate as a result of enactment of FQPA. In establishing this exemption from the requirement of a tolerance for pesticidal substances derived from sexually compatible plants, EPA does not intend to set precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. This exemption from the requirement of a tolerance will not restrict EPA's options with regard to general procedures and policies for implementation of the amended FFDCA section 408.

II. Statutory Authority

Under FFDCA, EPA regulates pesticide chemical residues by establishing tolerances limiting the amounts of residues that may be present in food, or by establishing exemptions from the requirement of a tolerance for such residues. Pesticide chemical residues subject to regulation under FFDCA are defined by reference to the definition of pesticide under FIFRA. FFDCA section 201(q)(1) defines a ''pesticide chemical residue'' to mean the residue in or on food of a pesticide chemical or other added substance resulting primarily from the metabolism or degradation of a pesticide chemical (21 U.S.C. 321(q)(2)). A ''pesticide chemical'' means ''any substance that is a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act, including all active and inert ingredients of such pesticide'' (21 U.S.C. 321(q)(1)).

FIFRA authorizes EPA to regulate the sale and distribution of pesticides in the United States and to exempt a pesticide from the requirements of FIFRA if it is not of a character requiring regulation (7 U.S.C. 136a(a) and 136w(b)). FIFRA section 2(u) defines ''pesticide'' as: (1) ''any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer'' (7 U.S.C. 136(u)).

FQPA amends both FFDCA and FIFRA. FQPA, which took effect on August 3, 1996, among other things, amends FIFRA such that a registration cannot be issued for a pesticide to be used on or in food unless the residue of the pesticide in food qualifies for a tolerance or exemption from the requirement for a tolerance. FQPA modified FIFRA section 2(bb) by incorporating the FFDCA section 408 safety standard into the test for determining whether a pesticide poses an unreasonable adverse effect (7 U.S.C. 136(bb)). FIFRA section 2(bb) defines the term ''unreasonable adverse effects on the environment'' to mean (1) any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or (2) a human dietary risk from residues that result from a use of a pesticide in or on any food inconsistent with the standard under section 408 of the FFDCA. Thus, a pesticide used in or on food that does not meet the FFDCA section 408 safety standard also would pose an unreasonable adverse effect under FIFRA and would not qualify for an exemption from the requirements of FIFRA under FIFRA section 25(b)(2).

FQPA amends FFDCA section 408(c)(2)(A)(i) to allow EPA to establish an exemption from the requirement of a tolerance for a ''pesticide chemical residue'' only if EPA determines that the exemption is ''safe'' (21 U.S.C. 346a(c)(2)(A)(i)). Section 408(c)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information'' (21 U.S.C. 346a(c)(2)(A)(ii)). This includes exposure through drinking water, but does not include occupational exposure. In establishing an exemption from the requirement of a tolerance, FFDCA section 408(c), like the statute prior to FQPA, does not require EPA to consider benefits that might be associated with use of the pesticide chemical.

FFDCA section 408 requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue'' (21 U.S.C. 346a(b)(2)(C)(ii)(I)) and (c)(2)(B). Section 408(b)(2)(D) specifies other, general factors EPA is to consider in establishing an exemption. Section 408(c)(3)(B) prohibits an exemption unless there is either a practical method for detecting and measuring levels of pesticide chemical residue in or on food or there is no need for such a method (21 U.S.C. 346a(c)(3)(B)).

Specifically, EPA must consider the following in deciding whether to grant an exemption:

1. The validity, completeness, and reliability of the available data from studies of the pesticide chemical and pesticide chemical residue.

2. Nature of any toxic effect shown to be caused by the pesticide chemical or residues in studies.

3. Available information concerning the relationship of the results of such studies to human risk.

4. Available information concerning the dietary consumption patterns of consumers (and major identifiable subgroups of consumers).

5. Available information concerning the cumulative effects of such residues and other substances that have a common mechanism of toxicity.

6. Available information concerning the aggregate exposure levels of consumers to the pesticide chemical residue and to other related substances, including dietary exposure and non-occupational exposures.

7. Available information concerning the variability of the sensitivities of major identifiable subgroups of consumers.

8. Such information as the Administrator may require on whether the pesticide chemical may have an effect in humans that is similar to an effect produced by a naturally-occurring estrogen or other endocrine effects.

9. 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 (21 U.S.C. 346a(b)(2)(D).

Additionally, with respect to exposure of infants and children, consistent with section 408(b)(2)(C), EPA must assess the risk of the pesticide based on available information concerning:

1. Consumption patterns that are likely to result in disproportionately high consumption of food with pesticide residues.

2. Special susceptibility of infants and children to such residues.

3. Cumulative effects of residues with other substances that have a common

mechanism of toxicity (21 U.S.C. 346a(b)(2)(C) and (c)(2)(B)).

III. Summary of Proposed Regulations

This supplemental notice affects three of the proposals that appeared in the November 23, 1994 **Federal Register**: (1) A proposal under FFDCA to exempt from the requirement of a tolerance, residues of the pesticidal substance portion of any plant-pesticide that is derived from a plant that is sexually compatible with the recipient plant (59 FR 60535); (2) a companion proposal (59 FR 60542) under FFDCA to exempt ''residues of nucleic acids produced in living plants as part of a plant-pesticide''; and (3) a proposal (59 FR 60519) under FIFRA to exempt from most of the requirements of FIFRA, plant-pesticides derived from a plant that is sexually compatible with the recipient plant.

In the November 23, 1994 **Federal Register**, the Agency proposed to exempt from the FFDCA requirement of a tolerance (59 FR 60535) and most requirements of FIFRA (59 FR 60519) pesticidal substances moved between plants that are closely related. EPA discussed two options for describing plants that are closely related: (1) Plants that are sexually compatible, or (2) plants that are within the same taxonomic genus or are sexually compatible. Sexual compatibility would include use of techniques such as wide and bridging crosses. EPA's preferred approach for describing closely related plants was the option based on sexual compatibility alone. Thus, EPA proposed that plant-pesticides derived from plants that are sexually compatible would be exempt from most FIFRA requirements, and residues of pesticidal substances that are derived from sexually compatible plants would be exempted from the FFDCA requirement of a tolerance.

The rationale underlying the proposed exemptions is that plants in a sexually compatible population are likely to have the same information encoded in their genetic material and to share traits in common. Groups of plants having a common pool of genetic material have resulted from the processes of evolution. Generations of directed breeding to produce improved crops for cultivation have tended to increase the relatedness of agricultural crop plants and reduce the variability in the common pools of genetic information of crop plants. Because sexually compatible plants share a common pool of genetic material, movement of genetic material encoding pesticidal substances between plants in a sexually compatible population is unlikely to result in novel environmental or dietary exposures. If a crop plant normally produces a pesticidal substance, humans consuming the crop, and organisms coming into contact with the plant, have been exposed to that substance in the past, perhaps over long periods of time. No new exposures are likely to occur. Because of the high degree of relatedness among plants comprising sexually compatible populations, the potential for new human exposures, either dietary or environmental, is low for pesticidal substances in sexually compatible plants or plant parts used as food or feed. Under the exemptions for plant-pesticides derived from sexually compatible plants, EPA exempts from the FFDCA requirement of a tolerance those plant-pesticides that are normally a component of (not new to) the recipient plant. EPA believes that crops grown for food in the U.S. today would qualify for this exemption (59 FR at 60535 and 60542) based on the standard of relatedness as described by sexual compatibility.

The proposed exemption from the requirement of a tolerance (59 FR 60535) was examined within the context of the food supply and dietary consumption. Many substances having pesticidal activity occur naturally at low concentrations in the edible parts of plants and have long been accepted as part of the human diet. Extensive use and experience show the safety of foods containing these substances. Although very large numbers of plant varieties are used and large numbers of varieties are introduced into agricultural use each year, there are only a few examples of plant varieties causing food safety concerns.

Based on these considerations, and as required by the FFDCA prior to enactment of the FQPA, EPA concluded that plant-pesticides found in the current food supply would present no hazard under potential use conditions and, hence, a tolerance would not be necessary to protect the public health.

EPA's alternative option for describing relatedness in plants (59 FR at 60537) used both sexual compatibility and taxonomy (genus). Under this alternative option, if a plant-pesticide was derived from a plant classified in the same genus as the recipient plant or if the donor plant was sexually compatible with the recipient plant, that plant-pesticide would be exempt. The assumption underlying this alternative option was that the taxonomic grouping of genus correlated to a relatively high degree of relatedness. This option was not EPA's preferred approach, because even though plants grouped within a genus may be fairly closely related, certain species within a genus may never have contributed traits to plants currently found in the food supply and thus no known dietary exposure exists for traits from such plants. Therefore, EPA preferred the option based on sexual compatibility alone which EPA believes best describes plant-pesticides found in the food supply.

In the 1994 **Federal Register** (59 FR 60535), EPA also proposed to exempt from the requirement of a tolerance a second category of pesticidal substances. This second category consists of pesticidal substances that are derived from food plants that are not closely related to the recipient plant but which would not result in significantly different dietary exposures when produced in the recipient plant. This second category will not be addressed in this supplemental notice but will be addressed in a separate **Federal Register** in the future.

IV. Risk Assessment and Safety Determinations

A. Risk Assessment in the 1994 Proposal

This section reviews the analysis that EPA used to support its 1994 proposal (59 FR 60535) to exempt pesticidal substances derived from sexually compatible plants from the requirement of a food tolerance under the FFDCA. EPA also relied upon the analysis in the 1994 FFDCA proposal to evaluate human dietary risks in support of its proposal (59 FR 60519) to exempt plant-pesticides from sexually compatible plants from most FIFRA requirements. Non-dietary human risks from exposure to such pesticidal substances were examined under the analysis for the proposed FIFRA exemption and are discussed in this supplemental notice only as they pertain to the dietary risks.

When EPA proposed in 1994 to exempt residues of pesticidal substances that are derived from sexually compatible plants from the requirement of a tolerance (59 FR 60535), it concluded that a food tolerance for such substances would not be necessary to protect the public health because such substances presented no significant hazards under potential use conditions. EPA based this conclusion upon its analysis of potential dietary exposure, hazard and risk from consumption of plants that contain these substances. EPA recognized and relied on the long history of human experience with growing and consuming plants for food and with the procedures of plant breeding. Plant breeding combines the scientific knowledge of experimental laboratory disciplines such as plant

physiology, plant genetics, and phytopathology into a practical field science that develops new plant cultivars for use in agriculture. EPA has used these bases of knowledge and experience in its estimation of exposures and hazards of the residues of pesticidal substances addressed by this supplemental notice as well as for the 1994 proposal.

EPA concluded in the 1994 proposal (59 FR 60535) that the vast majority of plant varieties developed by plant breeders using traits from sexually compatible plants produce foods that are safe for human consumption. This conclusion is based on the experience of consuming crops resulting from scientific breeding as well as the historical consumption of crops since the prehistorical origins of agriculture. These foods undoubtedly contain(ed) pesticidal substances (and the genetic material necessary to produce them) and share a history of safe consumption. In addition, appropriate processing procedures are widely known and are routinely used by consumers in preparation of food from such sources, including those foods which require specific processing/preparation steps to avoid dietary problems.

In the 1994 proposal, EPA stated that many substances having pesticidal activity occur naturally at low concentrations in the edible parts of plants and have long been accepted as part of the human diet. Extensive use and experience show the safety of foods containing these substances. For many foods, the naturally-occurring toxicants they may contain, some of which might be pesticidal in function, are known. Also, the established practices that plant breeders employ in selecting and developing new plant varieties, such as chemical analyses, taste-testing, and visual analyses, have historically proven to be reliable for ensuring food safety. That there are few documented cases of new plant cultivars causing food safety problems despite the large numbers of new varieties introduced into commerce each year, is a reflection of the effectiveness of this process (59 FR at 60538).

Plant varieties for the food market have been developed by breeders seeking better products, higher yields, and other desirable crop characteristics. In this process, it has been common agricultural practice to move traits among sexually compatible food plant varieties as well as to introduce traits from sexually compatible wild relatives into plant varieties that are used as food plants. This type of breeding process has been used on most sexually compatible crop plants, and tended to increase the extent of relatedness among plant varieties in agricultural crops. The 1994 proposal is based on experience with the exposure of human populations to crops developed through the breeding process, i.e., crops developed through 50 to 100 years of scientific breeding among sexually compatible plant populations using Mendelian genetics. The sexually compatible, wild relatives of cultivated plants that are used in this process do not themselves necessarily have any history of human consumption but have safely contributed traits through sexual recombination to cultivars on the market. For example, wild species of tomatoes have been used, in plant breeding, as a source of increased resistance to economically important diseases in tomato (Ref. 1). Sexually compatible crop varieties of the same plant species are also crossed with each other to achieve better pest resistance in their progeny. Food plant varieties developed in this way have been introduced, cultivated, and consumed by humans for many years with very few observed adverse affects (59 FR at 60538).

If a food plant or its close relative normally produces a pesticidal substance, humans have likely been exposed to that substance in the past. Experience with both growing agricultural plants and consuming food from plants which undoubtedly contain pesticidal substances demonstrates the safety of the current food supply, including substances in the food supply that may be plant-pesticides. The Agency believes this experience combined with the knowledge of plant genetics, plant physiology, phytopathology and plant breeding are the appropriate considerations in evaluating the potential risks of residues of the pesticidal substances proposed for the tolerance exemption (59 FR 60535).

The residues of the pesticidal substances that are the subject of the proposed exemption have evolved in populations of sexually compatible plants. They are part of the metabolic cycles of these plants. They are thus subject to the processes of degradation and decay that all organic matter undergoes. They are not likely to persist in the environment nor bioaccumulate in the tissues of living organisms. Because they do not persist, the potential for new exposures to the residues to occur, beyond direct physical exposures to the plant, would be limited. As noted in the proposal (59 FR at 60516), plant-pesticides present negligible exposure of the pesticidal substances to humans outside the dietary route because the substances are in the plant tissue and thus are found either within the plant or in close proximity to the plant. In contrast, applied synthetic chemicals have much greater potential for new dietary exposures. Prior to the use of synthetic pesticides, there may be very little scientific experience with the new pesticidal substance or even a complete lack of known dietary exposure to the pesticidal substance.

EPA evaluated the potential risks of a pesticidal substance derived from a closely-related plant relative based upon the unique characteristics of plant-pesticides. In evaluating the pesticidal substance component of plant-pesticides, EPA took into account available knowledge from a number of scientific disciplines. Experimental data in the area of plant genetics provided an estimate of the exchange, between plants, of genetic material that is necessary for the production of the pesticidal substances. EPA also considered information from the field of plant physiology regarding plant metabolism, the production of substances that may have pesticidal effects, and conditions that may limit the production of such substances. This information provided a basis for EPA's estimation of the physiological limitations to production of substances that may have a pesticidal effect. The Agency also used experimental data derived from the science of phytopathology to characterize the disease and pest resistant mechanisms known to occur in plants. All of these bases of knowledge and experience were integral to EPA's assessment of exposures and hazards associated with pesticidal substances.

EPA considered whether there are variations in the levels of pesticidal substances that are the subject of the proposed exemption (59 FR 60535) within and between plant varieties, and thus variation in exposure that might affect the Agency's determination that pesticidal substances that are the subject of the proposed exemption present negligible risk. The amount of pesticidal substance produced by plants normally varies among members of a closely related population (even within a single variety), because of the effects of conditions such as genetic constitution and environment (e.g., weather) on trait expression. This variation in turn leads to differences in the levels and types of exposure to the pesticidal substance. Since such variation is a natural phenomenon common to all plants, humans have been and are always exposed to varying levels of the pesticidal substances that are the subject

of this exemption when they consume food from plants.

EPA also considered the constraints upon the extent to which any substance can be increased in highly managed food crop plants without unwanted effects on other, desirable characteristics of the plant such as yield or palatability. In general, breeders balance a number of characteristics (e.g., yield, palatability, uniformity of seed drop) in developing marketable plant varieties. Plants have, as do all organisms, only a limited capacity to express a particular trait without an unacceptable drain on energy reserves. Greatly increased levels of a pesticidal substance would, in general, only be accomplished at the expense of expressing other agriculturally desirable traits (e.g., yield). EPA does not believe that levels of pesticidal substances that are the subject of the proposed exemption (59 FR 60535) will be increased to a point that will result in an adverse dietary effect. EPA has extensively evaluated whether quantitative changes in levels of the pesticidal substances that are the subject of the proposed exemption would warrant regulation by the setting of a food tolerance. EPA has determined that changes in the levels of these pesticidal substances present a reasonable certainty of causing no harm because the highest levels likely to be attained in plants are not likely to result in overall significantly different dietary exposures. EPA does not anticipate that attempts to increase the levels of these pesticidal substances would lead to a significantly different spectrum of exposure than that with which there is substantial experience.

The evaluation of potential dietary risk associated with the pesticidal substances that are the subject of the proposed exemption (59 FR 60535) were considered within the context of the food supply and dietary consumption patterns. The residues of pesticidal substances that are the subject of the proposed exemption are components of a human diet. In developing the proposal, the Agency considered that the diet includes all of the food items that are customarily eaten by human populations or subpopulations. The consumption of food plants is part of a balanced and varied diet. Individuals recognize and are familiar with the plant crop derived food they consume and, based on prior experience with food, individuals avoid potential exposures to foods containing substances they know, either through personal experience or through acquired knowledge, cause them problems. Since the proposed exemption will not affect the current pattern of exposure to the pesticidal substances that are the subject of the proposed exemption, the current method whereby sensitive individuals recognize and avoid foods known to cause them problems will not be altered. As noted in the proposal (59 FR at 60505), ''consumer experience with the handling and preparation of food from these plants contributes to the safety of food from these plants.

The approach used by EPA to evaluate the dietary risk posed by the pesticidal substance component of plant-pesticides derived from sexually compatible plants (59 FR 60535) differs somewhat from the approach the Agency uses for other pesticides. For more traditional pesticides, EPA's risk evaluation relies on, for the most part, data generated by testing in laboratories using representative, single species animal model systems to estimate risk end-points such as toxicity and carcinogenicity. Conclusions from data generated from these single species testing systems are then extrapolated to conclusions concerning hazards to humans, including conclusions on dietary hazards presented by chemical pesticide residues in crops and domestic animals used as food sources for humans. Mathematical models, as well as experimental data, on pesticide residues, provide information on exposure. Exposure and hazard considerations are combined to quantify the potential risk associated with a traditional pesticide. Safety factors are often used in the risk assessment as an added measure of caution when toxicity data from surrogate animal testing are used to estimate human toxicity. Such safety factors are not necessary in risk assessment when data on human effects is directly available, as is the case for the proposed exemption from the requirement of a tolerance for residues of pesticidal substances derived from sexually compatible plants.

The approach to assessing risk described in the preceding paragraph is appropriate for analyzing risks posed by pesticide residues from pesticides such as chemical pesticides, pesticides extracted from plants, and some types of non-exempt plant-pesticides. For example, some chemicals used as pesticides may have no history of safe dietary consumption because they were created by humans and are synthetic. Single species animal testing may provide the only data on the effect of these pesticides on living organisms. Chemical pesticides that do not occur in nature, but are a product of human intervention, may not necessarily be subject to the processes by which biotic substances are degraded or cycled in nature. Thus, they may persist in the environment for long periods of time and may bioaccumulate in the tissues of living organisms.

The risk assessment methodology appropriate for such chemicals is not appropriate for the pesticidal substances that evolved in the plant and are the subject of the proposed exemption (59 FR 60535). Plant-pesticides derived from sexually compatible plants differ from more traditional pesticides in a number of ways. As noted in the proposal (59 FR at 60511), the major characteristic of plant-pesticides that is different from traditional pesticides is that the plant itself produces the pesticidal substance rather than the pesticide being applied to the plant. Thus, the exposure pattern may be very different for plant-pesticides than for traditional pesticides both because of how the pesticide is produced and the biology of plants. . . . the potential for causing adverse health effects may be more circumscribed than for traditional pesticides because, in many cases, the only significant route of human exposure may be oral.'' Several conditions limit the potential for exposure to plant-pesticides as compared to traditional pesticides. These include that: (1) Exposure with plant-pesticides would be primarily through one route (dietary), (2) production of the pesticidal substance is limited by the plant's physiological constraints, (3) plant-pesticides derived from sexually compatible plants are integral parts of a plant's metabolism and thus are compatible with the biological processes of other organisms. Because of their biotic nature, the pesticidal substances that are the subject of the proposed exemption do not persist in the environment nor do they bioaccumulate in the tissues of living organisms. Thus, the number of routes of exposure that must be considered in performing a risk assessment are reduced since the primary route of exposure to plant-pesticides will be ingestion of plant tissues that contain the pesticidal substances that are the subject of the proposed exemption.

When EPA proposed to exempt residues of pesticidal substances derived from sexually compatible plants from the requirement of a tolerance (59 FR 60535), it considered health risks to the general population, which included infants and children. Children and infants, like adults, have been consuming food containing the pesticidal substances that are the subject of the proposed exemption. There is no evidence such pesticidal substances, as a component of food, present a different level of dietary risk for infants and children than they would for the adult

population. EPA's risk assessment in the proposed exemption included subgroups as part of the general population, (i.e., infants and children and the effects of culture on diet), and allowed for consumption pattern differences of such subgroups. For infants and children and other subgroups, EPA relied on the human experience base that it describes in summary form in this supplemental notice. On the basis of its analysis, EPA determined that a tolerance would not be necessary to protect the health of infants and children because pesticidal substances derived from sexually compatible plants would not pose significant new dietary exposures and experience indicates that plant-pesticides that are the subject of the exemption present no hazard under the use conditions.

B. Risk Assessment in Light of Amendment to FFDCA

After EPA issued its proposed exemption from the requirement of a tolerance for plant-pesticides derived from sexually compatible plants (59 FR 60535), Congress enacted FQPA and amended certain FFDCA provisions governing pesticide chemical residues and FIFRA provisions governing pesticides (See Unit II. of this supplemental notice). Congress revised the specific wording of the section 408 standard for exemptions and provided more specific guidance regarding some of the factors that EPA should consider in establishing such exemptions (see Unit II. of this supplemental notice). When EPA proposed the exemption for residues of pesticidal substances derived from sexually compatible plants (59 FR 60535), it considered most of the safety factors spelled out in FQPA even though the Agency may not have explicitly discussed all those factors using the terminology specified in the FQPA amendments. This supplemental notice describes how the Agency took account of most of the FQPA factors in issuing its 1994 proposal to exempt pesticidal substances derived from sexually compatible plants and indicates which factors were considered in that proposal. The information the Agency relied on in considering these factors is part of the public record which was available to the public when EPA issued the proposed exemption from the requirement of a food tolerance. The supplemental notice also identifies the factors that were not considered in the proposal. Because FQPA amended FIFRA by incorporating the section 408 safety standard, commenters should be aware that comments on this supplemental notice may also affect EPA's final determination on the proposed exemption (59 FR 60519) under FIFRA for plant-pesticides that are derived from plants sexually compatible with the recipient plant.

1. *Validity, completeness, and reliability of available data.* EPA considered in 1994 the validity, completeness, and reliability of the available data with regard to pesticidal substances derived from sexually compatible plants in the proposals (59 FR 60519 and 60535) and has summarized the evaluation in Unit IV.A. of this supplemental notice.

2. *Nature of toxic effect.* EPA in 1994 considered the nature of the toxic effects caused by pesticidal substances derived from sexually compatible plants in the proposals (59 FR 60519 and 60535) and has summarized its evaluation in Unit IV.A. of this supplemental notice.

3. *Relationship of studies to humans.* EPA in 1994 considered the available information concerning the relationship to humans of toxic effects of pesticidal substances that are the subject of the proposed exemption when it issued the proposals (59 FR 60519 and 60535) and has summarized that evaluation in Unit IV.A. of this supplemental notice. EPA based its evaluation on the history of human consumption of food derived from crop plants, and from products such as meat and milk from animals that consume forage and other crops (e.g., corn and other grains) that contain residues of pesticidal substances that are the subject of the proposed exemption (59 FR 60535). Because knowledge of human consumption of food derived from sexually compatible plants was available and adequately addressed the issues of hazard and exposure, the Agency did not use, for the proposed exemption (59 FR 60535), data generated in the laboratory through animal testing.

4. *Dietary consumption patterns.* EPA considered in the 1994 proposal (59 FR 60535) the available information on the varying dietary consumption patterns of major identifiable consumer subgroups as it pertains to pesticidal substances derived from sexually compatible plants. The Agency's evaluation is summarized in Unit IV.A. of this supplemental notice.

5. *Available information concerning cumulative effects of the pesticide chemical residue and other substances that have a common mechanism of toxicity.* In the 1994 proposal (59 FR 60535), EPA examined available information on the cumulative effect of pesticidal substances derived from sexually compatible plants as well as other substances present in food that may have a common mechanism of toxicity with such pesticidal substances. EPA summarizes this information and its analysis in Unit IV.A. of this supplemental notice.

With regard to the pesticidal substance itself, the proposal notes (59 FR at 60505) that this exemption ''is based upon the premise that new dietary exposures would not likely arise for plant-pesticides produced in food plants if the genetic material leading to the production of the plant-pesticide is derived from sexually compatible plants.'' Thus, the proposal would exempt residues of pesticidal substances that are normally components of (not new to) food from plants in sexually compatible populations. As discussed in Unit IV.A. of this supplemental notice, differences in the levels of pesticidal substances present may occur between plants in a sexually compatible population. EPA determined in the proposals that changes in the levels of these pesticidal substances are not likely to result in overall significantly different dietary exposures. As noted in the proposal (59 FR at 60538) ''[e]xtensive use and experience show the safety of foods containing these substances.'' If, however, information becomes available that indicates this finding is no longer consistent with the FFDCA exemption standard for a pesticidal substance in this category, EPA will consider the validity of the new information and act to amend this tolerance exemption as necessary to protect the public health. In the 1994 proposal (59 FR at 60535), EPA is proposing a requirement that any person who sells or distributes plant-pesticides that have been exempted must report to EPA any information that comes into their possession regarding unreasonable adverse effects of an exempted plant-pesticide on human health or the environment.

With regard to substances in food that may share a common mechanism of toxicity with the residues of the pesticidal substances that are the subject of the proposed exemption (59 FR 65035), EPA considered the effects of these substances when it addressed the safety of food. Food from plants has thousands of constituents. Thus, EPA cannot rule out the possibility that the foods humans consume would also contain substances that have a common mechanism of action with the pesticidal substances that are the subject of the proposed exemption. However, because sexually compatible plants share a common pool of genetic material, any substances that may share a common mechanism of toxicity with the pesticidal substances that are the subject

of the proposed exemption (59 FR 60535) are normally components of (not new to) food from plants in sexually compatible populations. As discussed in the 1994 preamble and supporting record for the proposal, food from plants in sexually compatible populations have historically been safely consumed by humans either directly, or indirectly in products such as meat and milk that are derived from animals that consume forage and other crops (e.g., corn and other grains). The history of safe consumption indicates that any cumulative effects between substances in food that may have a common mechanism of toxicity with the pesticidal substances that are the subject of the proposed exemption present a very low probability of human risk. The analysis made in the preceding paragraph concerning potential increases in levels of pesticidal substances apply equally to constituents of food that may have a common mechanism of action with the pesticidal substances that are the subject of this exemption (59 FR 60535). Variation in the levels of these substances are not likely to result in overall significantly different dietary exposures. As noted in the proposal (59 FR at 60538) ''plant varieties that meet the sexually compatible standard produce food that is safe for human consumption and/or appropriate processing procedures are widely known and routinely used by consumers in preparation of food from such sources.'' However, should EPA in the future identify substances with a common mechanism of toxicity with the plant-pesticides that are the subject of the proposed exemption, both FIFRA and FFDCA give the Agency adequate authority to take appropriate action to address any risks to humans health.

EPA is not aware of any other substances outside of the food supply that may have a common mechanism of toxicity with the residues of the pesticidal substances that are the subject of the proposed exemption (59 FR 60535), although it cannot rule out the possibility. Should EPA in the future identify substances with a common mechanism of toxicity other than those found in the parts of plants used as food, both FIFRA and FFDCA give the Agency adequate authority to take appropriate action to address any risks to humans health.

Because EPA already considered the safety of food containing residues of pesticidal substances derived from sexually compatible plants and other constituents of food that may share a common mechanism of toxicity with those residues when it issued the proposal (FR 60535), it is not requesting additional comment on that topic. Comments are requested only on the new issue of whether there are any substances outside of the food supply that have a common mechanism of toxicity with the residues of the pesticidal substances that are the subject of the proposed exemption, and the effects of any such substances on human health.

6. *Aggregate exposures of consumers including non-occupational exposures.* EPA considered the available information on the aggregate exposure level of consumers to pesticidal substances in the plant-pesticides to be exempt in the 1994 FFDCA and FIFRA proposals (59 FR 60519 and 60535). This included a consideration of exposures from dietary sources (59 FR 60535) as well as from other non-occupational sources (59 FR 60519). As indicated in EPA's policy statement, ''plant-pesticides are likely to present a limited exposure of the pesticidal substance to humans. In most cases, the predominant, if not the only, exposure route will be dietary. Significant respiratory and dermal exposures will be unlikely'' (59 FR at 60513). As explained in the FFDCA and FIFRA proposals and the EPA's policy statement (59 FR 60494) and associated dockets, plant-pesticides present negligible exposure of pesticidal substances to humans outside of the dietary route because the substances are in the plant tissue and thus are found either within the plant or in close proximity to the plant. EPA considered dietary exposure to the pesticidal substances in the proposed FFDCA exemption (59 FR 60535) and summarized its evaluation in Unit IV.A. of this supplemental notice.

Despite EPA's belief that, because of the nature of plant-pesticides, there is little likelihood of exposure other than through the dietary route, EPA in this supplemental notice sets forth in greater detail its considerations concerning other exposure routes. With regard to the dermal route of exposure, the pesticidal substances that are the subject of the proposed exemption (59 FR 60535) may in some cases be present in sap or other exudates from the plant or the food and thus may present some limited opportunity for dermal exposure to persons coming physically into contact with the plant or raw agricultural food from the plant. Individuals preparing meals are those most likely to experience dermal contact with the substances on a non-occupational basis. However, on a per person basis, the potential amounts involved in these exposures are negligible in comparison to potential exposure through the dietary route. Moreover, substances that occur naturally in food, including the pesticidal substances that are the subject of the proposed exemption, are unlikely to cross the barrier provided by the skin and thus the responses seen on rare occasions to substances in food are most likely to be localized skin irritations. Whether these irritations are caused by the pesticidal substance component of plant-pesticides is unknown but given the thousands of constituents of any food of plant origin, the probability that substances other than the plant-pesticides are the irritants is very high. Because substances present in food are unlikely to pass through the skin, dermal exposures are not additive to dietary exposures.

With regard to exposure through inhalation, the pesticidal substances may in some cases be present in pollen and some individuals (those near enough to farms, nurseries or other plant-growing areas to be exposed to wind-blown pollen) may be exposed, through inhalation, to the pollen. On a per person basis, the potential amounts of pollen involved in these exposures are negligible in comparison to potential exposure through the dietary route. Moreover, it is unlikely that exposure to the pollen is equivalent to exposure to the pesticidal substance. The pesticidal substance will not in every case be present in the pollen. When it is present in pollen, the pesticidal substance will be integrated into the tissue of the pollen grain. EPA cannot rule out the possibility that in some cases, the pesticidal substance or some piece of the pesticidal substance might be bound to the surface of the pollen grain (as opposed to the more likely circumstance of the substance being within the pollen grain). If the substance is bound to the surface of the pollen, lung or respiratory tract tissue in humans might be exposed to the pesticidal substance. Substances that occur naturally in pollen, including the pesticidal substances that are the subject of the proposed exemption, are unlikely to cross the barrier provided by the mucous membrane of the respiratory tract and thus are not additive to dietary exposure.

EPA also evaluated potential non-occupational exposures in drinking water. As noted in the preceding paragraphs, the substances in plants or parts of plants, including the pesticidal substances that are the subject of the proposed exemption (59 FR 60535), are produced inside the plant itself. The pesticidal substances are integrated into and an integral part of the living tissue of the plant. When the plant dies or a part is removed from the plant,

microorganisms colonizing the tissue immediately begin to digest it, using the components of the tissue (including any pesticidal substances in the tissue) as building blocks for making their own tissues or for fueling their own metabolisms. The pesticidal substances that EPA proposed to exempt are subject to the same processes of degradation and decay that all organic matter undergoes. This turnover of biochemical materials in nature through a process of degradation occurs fairly rapidly. Therefore, these pesticidal substances do not persist in the environment or bioaccumulate. There is no indication that naturally occurring plant biochemical compounds, including the pesticidal substances that are the subject of the proposed exemption, are resistant to this degradation. Because of the fairly rapid turnover of these substances, even if they reach surface waters (through pollen dispersal or parts of the plants (leaves, fruits etc.) falling into bodies of water), they are unlikely to present anything other than a negligible exposure in drinking water drawn from surface water sources. Should they resist degradation long enough to enter groundwater, they are unlikely to present anything other than a negligible exposure in drinking water drawn from groundwater. Therefore, although a potential for non-dietary exposure (i.e., non-food oral, dermal and inhalation) in non-occupational settings may exist, EPA expects such exposure to be negligible.

With regard to exposure to ''other related substances,'' EPA is not aware of any other substances that may be related, via a common mechanism of toxicity, to the pesticidal substances that are the subject of the proposed exemption (59 FR 60535), other than related substances that are present in parts of plants used as food. Thousands of substances are present in the edible parts of plants. These may include substances related, via a common mechanism of toxicity, to the pesticidal substances that are the subject of the proposed exemption. These related substances have long been accepted as part of the human diet. Extensive use and experience show the safety of foods containing these substances. It also shows the safety of these substances consumed in aggregate through the dietary route with the pesticidal substances that are the subject of the proposed exemption. With regard to non-occupational exposure through routes other than dietary exposure, no evidence, in the many years of human experience with the growing and consumption of food from plants that may contain substances that may be related via a common mechanism of toxicity to the pesticidal substances that are the subject of the proposed exemption, indicates that adverse effects due to aggregate exposure through the dietary, non-food oral, dermal and inhalation routes occurs.

Should EPA in the future identify substances related via a common mechanism of toxicity to the pesticidal substances that are the subject of the proposed exemption, FIFRA and the FFDCA provide the Agency adequate authority to take appropriate action to address any risks associated with those related substances. Substances that are isolated from the plant's tissues, concentrated and then applied topically as pesticides to the plant or to food would not be covered by the proposed exemption (59 FR 60535), but would be subject to the tolerance requirements of FFDCA.

Because the Agency already considered exposure to the pesticidal substances that are the subject of the proposed exemption (59 FR 60535) and to substances related via a common mechanism of toxicity to these pesticidal substances in food when it issued the proposal, it is not requesting additional comment on this topic. Comments are requested only on the issue of whether there are additional substances outside that food supply that are related, via a common mechanism of toxicity, to residues of the pesticidal substances that are the subject of the proposed exemption and the effects of exposure to any such substances on human health.

7. *Sensitivities of subgroups*. In 1994, EPA considered available information on the sensitivities of subgroups as it pertains to the pesticidal substances derived from sexually compatible plants in the proposal (59 FR 60535) and has summarized the evaluation in Unit IV.A. of this supplemental notice.

8. *Naturally occurring estrogen or other endocrine effects*. FFDCA now directs EPA, in establishing an exemption from the requirement of a tolerance, to consider ''such information as the Administrator may require on whether the pesticide chemical may have an effect in humans that is similar to an effect of a naturally occurring estrogen or other endocrine effect'' (21 U.S.C. 346(a)(q)). Congress allowed EPA 2 years to establish a screening program to determine whether certain pesticide chemicals may have estrogenic effects and an additional year to implement the program (21 U.S.C. 408(p)). As part of the screening and implementation process, EPA is determining what information might be required and how it will address estrogenic effects from pesticide residues in general.

While there is some information on estrogenic effects from exposure to certain pesticides, the data are limited. It is known that certain food plants contain estrogen mimics, termed phytoestrogens. Such phytoestrogens are currently being consumed by humans in food derived from plants. EPA cannot rule out the possibility that such phytoestrogens could be used as plant-pesticides. Potential exposure of humans via consumption of plant tissue to phytoestrogens exerting estrogenic effects and used as plant-pesticides may need to be considered when the issue of endocrine disruptors is examined by EPA. If dietary exposure to phytoestrogens (that are also plant-pesticides) is discovered to be a significant factor, the Agency will re-examine this proposed exemption from the requirement of a tolerance (59 FR 60535) in light of that information.

9. *Safety factors*. In the 1994 proposal, EPA did not rely on the available animal data in reaching its determination that a tolerance is not necessary to protect the public from pesticidal substances derived from sexually compatible plants (59 FR 60535). As discussed in Unit IV.A. of this supplemental notice, EPA relied on the long history of safe human consumption of the pesticidal substances that are the subject of the proposed exemption in food from sexually compatible plant populations and in food derived from animals that consume forage and other crops (e.g., corn and other grains). EPA continues to believe that long-term evidence of human consumption, not animal experimentation data, is the appropriate information base for the proposed exemption (59 FR 60535). Because EPA did not rely on animal experimentation data, the Agency did not consider which safety factors would be appropriate to use in assessing risk to humans based on data generated through experiments on animals.

10. *Infants and children*.—a. *Dietary consumption patterns*. In the 1994 proposal (59 FR 60535), EPA considered available information on the dietary consumption pattern of infants and children as pertains to the pesticidal substances derived from sexually compatible plants and has summarized the evaluation in Unit IV.A. of this supplemental notice. The range of foods consumed by infants and children is in general more limited than the range of foods consumed by adults. Most newborns rely on milk products for nutrition, although some infants are fed soy based products. Infants begin as early as 4-months of age to consume

specific types of solid foods containing residues of pesticidal substances that are the subject of the proposed exemption. Subsequent to 4 months of age, apart from processing to facilitate swallowing, the diets of infants are based on foods consumed by the general adult population albeit in different proportions. As infants and children mature, more and more of the foods normally consumed by adults become part of their diets and the relative proportions of the different types of food consumed changes to more closely resemble an adult diet.

b. *Special susceptibility*. In the 1994 proposal (59 FR 60535), EPA considered available information on the potential for susceptibility of infants and children, including pre- and post-natal toxicity, as these factors pertain to the pesticidal substances derived from sexually compatible plants and has summarized the evaluation in Unit IV.A. of this supplemental notice.

c. *Cumulative effects of residues with other substances with a common mechanism of toxicity*. In the 1994 proposal (59 FR 60535), EPA examined the available information on the cumulative effect of residues of pesticidal substances derived from sexually compatible plants as well as other substances in food that may have a common mechanism of toxicity. The Agency's consideration in the proposal of the effects of the residues of pesticidal substances that are the subject of the proposed exemption (59 FR 60535) for the general population also included consideration of effects for infants and children. See Unit IV.B.5. of this supplemental notice for a discussion of cumulative effects of the pesticide chemical residues and other substances that have a common mechanism of toxicity.

Because EPA already considered the safety of food containing residues of pesticidal substances derived from sexually compatible plants and other constituents of food when it issued the proposal (FR 60535), the Agency is not requesting additional comment on that topic. Comments are requested only on the new issue of whether there are any substances outside of the food supply with a common mechanism of toxicity to the residues of the pesticidal substances that are the subject of the proposed exemption and the effects of any such substances on infants and children.

d. *Margin of safety*. In determining whether the residues of the pesticidal substances that are the subject of the proposed exemption (59 FR 60535) are safe, FFDCA section 408(b)(2)(C) directs EPA to apply a tenfold margin of safety for the residues and other sources of exposure to infants and children to account for potential pre- and post-natal toxicity and completeness of data on threshold effects with respect to exposure and toxicity to infants and children, unless a different margin will be safe. In proposing the exemption, EPA based its assessment of exposure and toxicity upon reliable information (Ref. 1) including the long history of safe human consumption of food containing residues of the pesticidal substances that are the subject of the proposed exemption and other substances in food that may have a common mechanism of toxicity, and the unique nature of plant-pesticides. EPA did not rely on animal data. EPA relied on observations concerning whole food consumption by humans and did not rely on single entity testing, wherein substances are isolated from a plant source, and fed to animals at high concentrations (Ref. 1). EPA relied on the vast experiential base of actual food consumption patterns rather than limited testing situations. EPA thus, did not utilize animal or other studies that would yield data that could be subjected to an additional margin of safety. (See Units IV.A. and IV.B.3. of this supplemental notice). As a result, the FQPA amendments to FFDCA do not affect EPA's analysis.

C. Safety Determinations in Light of FFDCA Amendment

Based on the information discussed in the 1994 proposals (59 FR 60496 through 60547), the discussion in Unit IV.A. and the analysis in Unit IV.B. of this supplemental notice, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population in general, and U.S. infants and children, from aggregate exposure to residues of pesticidal substances derived from sexually compatible plants, including all anticipated dietary exposures and all other exposures for which there is reliable information. Under the proposed exemption from the requirement for a tolerance (59 FR 60535), EPA would exempt residues of pesticidal substances that are normally components of (not new to) food from plants in sexually compatible populations. Extensive use and experience show the safety of foods containing these substances. No evidence, in the many years of human experience with the growing and consumption of food from plants containing the pesticidal substances that are the subject of the proposed exemption (59 FR 60535), indicates that adverse effects due to aggregate exposure through the dietary, non-food oral, dermal and inhalation routes occur.

The conclusion that residues of pesticidal substances derived from sexually compatible plants should be exempt from tolerance requirements under the FFDCA section 408 safety standard also lends support to EPA's proposed FIFRA exemption (59 FR 60519) for plant-pesticides derived from sexually compatible plants with respect to human dietary risks. In the FIFRA proposal, EPA utilized two criteria to determine whether plant-pesticides should be exempt: (1) Whether they posed a low probability of risk, and (2) whether they caused unreasonable adverse effects on the environment. Based upon the determination that residues of pesticidal substances subject to the proposed exemption (59 FR 60535) and the nucleic acid component of plant-pesticides (59 FR 60542) meet the FFDCA section 408 safety test, EPA concludes plant-pesticides derived from sexually compatible plants would pose only a low probability of human dietary risk and also would not pose an unreasonable adverse effect with respect to such risks.

D. Other Considerations

When the Agency proposed to establish an exemption from the requirement of a tolerance for residues of pesticidal substances derived from sexually compatible plants (59 FR 60535), EPA did not propose any numerical limitation on the amount of pesticidal substance that could be present in food containing these residues. EPA consulted in 1994 with the Department of Health and Human Services (DHHS) in developing the proposed exemption (59 FR 60535) and this supplemental notice and will consult with the Secretary of HHS prior to issuing the final rule. Because the 1994 proposal was for the exemption from the requirement of a tolerance, the Agency has concluded that an analytical method for detecting and measuring the levels of the residues of the subject pesticidal substances in or on food is not required.

V. Comments

A. Confidential Business Information

Information submitted as comments concerning this supplemental notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in

40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

B. 30–Day Comment Period

EPA is allowing a 30–day comment period because it has determined that such a period will provide the public with an adequate opportunity to respond to the additional issues raised in this supplemental notice. FFDCA and FIFRA do not specify a comment period for this type of notice. EPA has decided that a 30–day comment period is reasonable because this supplemental notice raises very few new issues that were not already available for public comment. As discussed in Unit IV. of this supplemental notice, EPA effectively considered most of the factors required by the FQPA amendments of FFDCA and FIFRA relevant to the proposed exemptions when it issued the proposed package of notices describing EPA's approach in 1994 (59 FR 60496, 60519, 60535, 60542 and 60545). At that time, the public had an opportunity to review both the Agency's rationale for the proposals and the underlying support documents during a 90–day public comment period. Only a limited number of new issues have been raised by the FQPA amendments to FFDCA and FIFRA and the Agency continues to rely upon the information already in the docket for the 1994 proposals and thus 30 days should provide adequate time for public comment. In addition, EPA believes that it is in the interest of the public to publish the final exemption from the requirement of a tolerance in a timely manner.

C. Request for Comments

Interested persons are invited to submit written comments on the new issues raised in this supplemental notice specifically on:

(1) Whether there are substances, outside of the food supply, sharing a common mechanism of toxicity with pesticidal substances that are derived from sexually compatible plants. Commenters are asked to submit information on the cumulative effects of such substances and the pesticidal substances that are the subject of the proposed exemption (59 FR 60535).

(2) Whether there are substances, outside of the food supply, related via a common mechanism of toxicity to pesticidal substances that are derived from sexually compatible plants, to which humans might be exposed through non-occupational routes of exposure. Commenters are asked to describe routes through which such exposure might occur, including exposure to major identifiable subgroups of human populations (e.g., infants and children). If such routes are identified, commenters are requested to provide information on the nature and levels of the expected exposure.

Entities may also offer comments on issues V.C.1. and V.C.2. above as they apply to Option 2 as described in the November 23, 1994 **Federal Register** (59 FR at 60537) ''Plant-pesticides derived from plants within the same genus or from sexually compatible plants'' under the revised FFDCA section 408 safety standard. The Agency will not consider comments that address issues or information already presented for public comment in the proposed rule issued in the November 23, 1994, **Federal Register**.

Commenters who possess information on substances occurring in food that may have estrogenic effects and may be used as plant-pesticides are requested to send such information to EPA.

In this supplemental notice, EPA describes in greater detail the rationale supporting the statement made in the 1994 **Federal Register** (59 FR at 60513) that ''plant-pesticides are likely to present a limited exposure of pesticidal substances to humans. In most cases, the predominant, if not the only route of exposure will be dietary. Significant respiratory and dermal exposures will be unlikely.'' No comments were received on this statement during the official comment period. Commenters may comment on this more detailed rationale.

In this supplemental notice, EPA also describes in greater detail how the rationale presented in the 1994 **Federal Register** (59 FR at 60538) concerning the safety for human consumption of food from plants that meet the sexually compatible standard applies to infants and children. No comments were received on this statement during the official comment period. Commenters may comment on this more detailed rationale specifically addressing infants and children as part of the larger human population.

VI. Public Docket

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number ''OPP–300368A'' (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 address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''OPP–300368A.'' Electronic comments on this supplemental notice may be filed online at many Federal Depository Libraries.

VII. References

(1) International Food Biotechnology Council, 1990. Biotechnologies and food; Assuring the safety of foods produced by genetic modification. In: *Regulatory Toxicology and Pharmacology*. Vol 12. Academic Press, New York.

VIII. Regulatory Assessment Requirements

This supplemental notice merely seeks additional comments on the proposed rules with regard to the potential impact that the new statutory amendments imposed by the August 3, 1996 Food Quality Protection Act (FQPA) might have on the provisions as proposed. As such, this notice does not contain any new proposed requirements that would require additional consideration by the Office of Management and Budget (OMB) under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993) or the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* It does not require any other action under Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The Agency's activities related to these regulatory assessment requirements are discussed in the proposed rules.

EPA did not consider Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) at the proposal stage because the proposed rules were

issued prior to its enactment. Although this supplemental notice is not subject to UMRA because it neither proposes or finalizes any regulatory requirements, the applicability of the UMRA requirements will be addressed in the final rules.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Plants, Plant-pesticides, Reporting and recordkeeping requirements.

Dated: May 7, 1997.

Lynn R. Goldman

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97–12784 Filed 5–15–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300371A; FRL–5716–7]

RIN 2070-AC02

Plant-Pesticides; Nucleic Acids; Supplemental Notice of Proposed Rulemaking

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This document announces the availability of information for additional public comment regarding a proposed exemption from the requirement of a tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA) for residues of nucleic acids (i.e., deoxyribonucleic acid and ribonucleic acid) produced in plants as part of a plant-pesticide. Comments on this document may also affect EPA's final determination on three proposed exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). In 1994, EPA proposed to exempt from the requirement of tolerance residues of nucleic acids produced in plants as part of a plant-pesticide because such a tolerance would not be necessary to protect the public health. Since publication of the proposal, Congress enacted the Food Quality Protection Act (FQPA) which amended FFDCA and FIFRA. EPA is issuing this document today to provide the public with an opportunity to comment on EPA's analysis of how certain FQPA amendments to FFDCA and FIFRA apply to the proposed exemption from the requirement of a tolerance for residues of nucleic acids produced in plants as part of a plant-pesticide. EPA believes that it considered most of the substantive issues associated with the FQPA amendments when it issued the proposal in 1994. EPA is, thus, in this document, specifically seeking comment only on its evaluation of the requirements imposed by FQPA that the Agency did not address in the proposal.

DATES: Comments, identified by the docket control number ''OPP–300371A,'' must be received on or before June 16, 1997.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person deliver comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Comments and data may also be submitted electronically by following the instructions under Unit VI. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Elizabeth Milewski, Office of Science, Coordination and Policy, Office of Prevention, Pesticides and Toxic Substances (7101), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260-6900, e-mail: milewski.elizabeth@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA issued in the November 23, 1994 **Federal Register** a package of five separate **Federal Register** proposals (59 FR 60496, 60519, 60535, 60542 and 60545) (FRL–4755–2, FRL–4755–3, FRL–4758–8, FRL–4755–5, and FRL–4755–4) which together described EPA's approach to substances produced in plants that enable the plants to resist pests or disease. EPA's package of proposals indicated that these substances are pesticides under section 2 of FIFRA (7 U.S.C. 136(u)) if they are ''intended for preventing, destroying, repelling, or mitigating any pest'' or if they are ''. . . intended for use as a plant regulator, defoliant, or desiccant'' regardless of whether the pesticidal capabilities evolved in the plants or were introduced by breeding or through the techniques of modern biotechnology. These substances, and the genetic material necessary to produce them, were designated ''plant-pesticides'' by EPA in the November 23, 1994, **Federal Register** notices. The notices defined a ''plant-pesticide'' as ''a pesticidal substance that is produced in a living plant and the genetic material necessary for the production of the pesticidal substance where the pesticidal substance is intended for use in the living plant'' (59 FR at 60534).

One of the five documents (59 FR 60542) proposed to exempt from the requirement of a tolerance residues of nucleic acids (i.e., deoxyribonucleic acid (DNA) and ribonucleic acid (RNA)) when such nucleic acids are produced in plants as part of a plant-pesticide (i.e., the genetic material necessary to produce the pesticidal substance). This supplemental notice addresses the nucleic acids portion of plant-pesticides produced in food plants. Because FQPA modified FIFRA (7 U.S.C. 136 *et seq.*) by incorporating the FFDCA safety standard into the FIFRA test for determining whether a pesticide poses an unreasonable adverse effect, comments on this supplemental notice may also affect EPA's final determination on proposed exemptions under FIFRA for three categories of plant-pesticides (59 FR at 60535): (1) Those that are derived from a plant that is sexually compatible with the recipient plant, (2) those that act primarily by affecting the plant, and (3) those that are coat proteins from plant viruses.

EPA is publishing this supplemental notice to ensure that the public has had adequate opportunity to comment on certain new considerations raised by the FQPA amendments to FFDCA as these considerations relate to the proposed exemption from a tolerance for residues of the nucleic acid portion of plant-pesticides produced in food plants. In evaluating a pesticide chemical residue for exemption from FFDCA tolerance requirements, EPA must now explicitly address certain factors, and make a determination that there is a reasonable certainty that aggregate exposure to the residue will cause no harm to the public. The factors to be considered are iterated in Unit II. of this supplemental notice. EPA's evaluation of these factors relative to the proposed exemption (59 FR 60535) is contained in Unit IV. of this supplemental notice. Consistent with FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. In today's supplemental notice, EPA requests comment only on the new conclusions identified in Unit V.C.

In light of FQPA, EPA is engaged in a process, including consultation with registrants, states, and other interested stakeholders, to make decisions on the

new policies and procedures that will be appropriate as a result of enactment of FQPA. In establishing this exemption from the requirement of a tolerance for residues of nucleic acids produced in plants as part of a plant-pesticide, EPA does not intend to set precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. This exemption from the requirement of a tolerance will not restrict EPA's options with regard to general procedures and policies for implementation of the amended FFDCA section 408.

II. Statutory Authority

Under FFDCA, EPA regulates pesticide chemical residues by establishing tolerances limiting the amounts of residues that may be present in food, or by establishing exemptions from the requirement of a tolerance for such residues. Pesticide chemical residues subject to regulation under FFDCA are defined by reference to the definition of pesticide under FIFRA. FFDCA section 201(q)(1) defines a ''pesticide chemical residue'' to mean the residue in or on food of a pesticide chemical or other added substance resulting primarily from the metabolism or degradation of a pesticide chemical (21 U.S.C. 321 (q)(2)). A ''pesticide chemical'' means ''any substance that is a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act, including all active and inert ingredients of such pesticide'' (21 U.S.C. 321(q)(1)).

FIFRA authorizes EPA to regulate the sale and distribution of pesticides in the United States and to exempt a pesticide from the requirements of FIFRA if it is not of a character requiring regulation (7 U.S.C. 136a(a) and 136w(b)). FIFRA section 2(u) defines ''pesticide'' as: (1) ''any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer'' (7 U.S.C. 136(u)).

FQPA amends both FFDCA and FIFRA. FQPA, which took effect on August 3, 1996, among other things, amends FIFRA such that a registration cannot be issued for a pesticide to be used on or in food unless the residue of the pesticide in food qualifies for a tolerance or exemption from the requirement for a tolerance. FQPA modified FIFRA section 2(bb) by incorporating the FFDCA section 408 safety standard into the test for determining whether a pesticide poses an unreasonable adverse effect (7 U.S.C. 136(bb)). FIFRA section 2(bb) defines the term ''unreasonable adverse effects on the environment'' to mean (1) any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or (2) a human dietary risk from residues that result from a use of a pesticide in or on any food inconsistent with the standard under section 408 of the FFDCA. Thus, a pesticide used in or on food that does not meet the FFDCA section 408 safety standard also would pose an unreasonable adverse effect under FIFRA and would not qualify for an exemption from the requirements of FIFRA under FIFRA section 25(b)(2).

FQPA amends FFDCA section 408(c)(2)(A)(i) to allow EPA to establish an exemption from the requirement of a tolerance for a ''pesticide chemical residue'' only if EPA determines that the exemption is ''safe'' (21 U.S.C. 346a(c)(2)(A)(i)). Section 408(c)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information'' (21 U.S.C. 346a(c)(2)(A)(ii)). This includes exposure through drinking water, but does not include occupational exposure. In establishing an exemption from the requirement of a tolerance, FFDCA section 408(c), like the statute prior to FQPA, does not require EPA to consider benefits that might be associated with use of the pesticide chemical.

FFDCA section 408 requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue'' (21 U.S.C. 346a(b)(2)(C)(ii)(I)) and (c)(2)(B). Section 408(b)(2)(D) specifies other, general factors EPA is to consider in establishing an exemption. Section 408(c)(3)(B) prohibits an exemption unless there is either a practical method for detecting and measuring levels of pesticide chemical residue in or on food or there is no need for such a method (21 U.S.C. 346a(c)(3)(B)).

Specifically, EPA must consider the following in deciding whether to grant an exemption:

1. The validity, completeness, and reliability of the available data from studies of the pesticide chemical and chemical pesticide residue.

2. Nature of any toxic effect shown to be caused by the pesticide chemical or residues in studies.

3. Available information concerning the relationship of the results of such studies to human risk.

4. Available information concerning the dietary consumption patterns of consumers (and major identifiable subgroups of consumers).

5. Available information concerning the cumulative effects of such residues and other substances that have a common mechanism of toxicity.

6. Available information concerning the aggregate exposure levels of consumers to the pesticide chemical residue and to other related substances, including dietary exposure and non-occupational exposures.

7. Available information concerning the variability of the sensitivities of major identifiable subgroups of consumers.

8. Such information as the Administrator may require on whether the pesticide chemical may have an effect in humans that is similar to an effect produced by a naturally-occurring estrogen or other endocrine effects.

9. 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 (21 U.S.C. 346a(b)(2)(D)).

Additionally, with respect to exposure of infants and children, consistent with section 408(b)(2)(C), EPA must assess the risk of the pesticide based on available information concerning:

1. Consumption patterns that are likely to result in disproportionately high consumption of food with pesticide residues.

2. Special susceptibility of infants and children to such residues.

3. Cumulative effects of residues with other substances that have a common mechanism of toxicity (21 U.S.C. 346a(b)(2)(C) and (c)(2)(B)).

III. Summary of Proposed Regulation

The proposal (59 FR 60542) described how EPA would view: (1) Deoxyribonucleic acid (DNA) and ribonucleic acid (RNA), (2) nucleic acid analogues (e.g., altered purine or pyrimidine bases) that may be considered ''nucleic acids'' by their chemical composition, and (3) DNA sequences that code for the RNA complement (anti-sense) of the messenger RNA (mRNA) for an essential enzyme or other component of an obligate parasite.

In the November 23, 1994 **Federal Register**, EPA proposed to exempt nucleic acids (i.e., deoxyribonucleic acid (DNA) and ribonucleic acid (RNA)) from the requirement of a tolerance when such nucleic acids are produced in plants as part of a plant-pesticide (59 FR 60542). In the proposal, EPA stated that the proposed exemption from the requirement of a tolerance for the nucleic acids portion of plant-pesticides produced in food plants is based on the ubiquity of nucleic acids in all forms of life, their presence in human and domestic animal food and the consequent large scale exposure of the human population with no evidence nucleic acids have caused any adverse health effects when consumed as part of a food plant. The Agency knows of no instance where nucleic acids naturally occurring in plants have been associated with any toxic effects related to the consumption of foods.

In the 1994 proposal, EPA recognized that nucleic acid analogues (e.g., altered purine or pyrimidine bases) may be considered ''nucleic acids'' by their chemical composition. Certain analogues are being developed as therapeutic agents for human diseases and nucleic acid analogues could conceivably be developed as pesticides. The proposed exemption does not extend to such nucleic acid analogues. The 1994 proposal only proposed to exempt the naturally occurring, non-modified nucleic acids (ribosides or deoxyribosides of A, T, G, C, and U) and polymers of such substances commonly found in living cells that encode the information necessary to make the pesticidal substances produced by plants.

The 1994 proposal also discussed how EPA proposed to view the introduction into plants of DNA sequences that code for the RNA complement (anti-sense) of the messenger RNA (mRNA) for an essential enzyme or component of an obligate parasite. One mechanism by which this RNA complement or anti-sense RNA is believed to work is to bind to the target mRNA and prevent it from binding to ribosomes, effectively terminating synthesis of the essential enzyme or other enzymes for making other essential cellular components necessary to survival of the parasite. This methodology is currently being developed for introducing pest-resistance into plants. As was noted in the proposed exemption, the Agency believes that the introduction and expression in plants of nucleic acids in this anti-sense technology do not present a hazard to the public health and such nucleic acids would qualify for this food tolerance exemption.

IV. Risk Assessment and Safety Determinations

A. Risk Assessment in Proposal

This unit reviews the analysis that EPA used to support its 1994 proposal (59 FR 60535) to exempt nucleic acids (DNA and RNA, including DNA and RNA used in anti-sense technology) produced in plants as part of a plant-pesticide from the requirement of a tolerance under FFDCA. EPA also relied upon the analysis in the 1994 FFDCA proposal to evaluate human dietary risks in support of its proposal (59 FR 60519) to exempt three categories of plant-pesticides (59 FR at 60535) from most FIFRA requirements. Non-dietary human risks from exposure to nucleic acids as part of plant-pesticides were examined under the analysis for the proposed FIFRA exemption and are discussed in this supplemental notice only as they pertain to the dietary risks.

EPA's 1994 proposal (59 FR 60542) to exempt nucleic acids produced in plants as part of a plant-pesticide from the requirement of a tolerance was based on the ubiquity of nucleic acids and their presence in human and domestic animal food without observed adverse health effects.

Nucleic acids encode the information necessary for the functioning of the organism. Chemically, nucleic acids occur in two types: deoxyribonucleic acid (DNA) and ribonucleic acid (RNA). DNA and RNA can be thought of as a ''tape'' containing information. DNA and RNA are polymers composed of small units, called ''nucleotides.'' A nucleotide is made up of a sugar, a phosphate group, and one of four heterocyclic bases. The heterocyclic bases in DNA are adenine, thymine, cytosine, and guanine. The heterocyclic bases in RNA are adenine, uracil, cytosine and guanine. The sugars and phosphates form a long chain or ''backbone'' with one heterocyclic base attached to each sugar. The information encoded in the nucleic acid is determined by the sequence in which the heterocyclic bases are attached to the sugar-phosphate backbone. Thus, the ''genetic material necessary for the production of the pesticidal substance'' are the nucleic acids encoding the information necessary for a plant cell to make the pesticidal substance.

Nucleic acids are also the chemical basis for heritable traits. When nucleic acids encoding the genetic information needed for the production of a pesticidal substance is stably integrated into the plant, that plant and its progeny will have the potential to produce the pesticidal substance.

Nucleic acids are widespread in foods and have not, by themselves, been associated with toxic or pathogenic effects on animals or humans. None of the constituents of nucleic acids are known to be acute toxicants, but like proteins and other normal constituents of food, may cause indirect, adverse metabolic effects if consumed exclusively at high doses over a long period of time in the absence of a normal balanced diet. Nucleic acids never occur at these high amounts in food plants and have not been associated with any toxic effects related to consumption of foods.

In the proposal, the Agency made clear that it is not proposing to exempt nucleic acid analogues from the requirement of a food tolerance. These analogues are not naturally occurring and those used as therapeutic agents frequently have significant toxicity associated with their use. The intent of EPA's 1994 proposal was to exempt only the naturally occurring, non-modified nucleic acids, and polymers of such substances, commonly found in living cells that serve as the mechanisms of encoding traits associated with pesticidal substances produced by plants.

EPA proposed to extend this exemption (59 FR 60542) from the requirement of a tolerance to the mRNA used in anti-sense technology based on the consideration that these mRNAs are analogous to naturally occurring, non-modified nucleic acid polymers commonly found in living cells. The rationale applied in the proposal to other naturally occurring, non-modified nucleic acid polymers applies equally to these mRNAs; the ubiquity of nucleic acids and their presence in human and domestic animal food and no observed adverse health effects associated with consumption of foods containing nucleic acids.

B. Risk Assessment in Light of Amendment to FFDCA

After EPA issued its proposed exemption from the requirement of a tolerance for nucleic acids produced in plants as part of a plant-pesticide (59 FR 60542), Congress enacted FQPA and amended certain FFDCA provisions governing pesticide chemical residues and FIFRA provisions governing pesticides (See Unit II. of this supplemental notice). Congress revised the specific wording of the section 408 standard for exemptions and provided more specific guidance regarding some of the factors that EPA should consider in establishing such exemptions (see

Unit II. of this supplemental notice). When EPA proposed the exemption for residues of nucleic acids produced in plants as part of a plant-pesticide (59 FR 60535), it considered most of the safety factors spelled out in FQPA even though the Agency may not have explicitly discussed all those factors using the terminology specified in the FQPA amendments. This supplemental notice describes how the Agency took account of most of the FQPA factors in issuing its 1994 proposal to exempt from the requirement of a tolerance nucleic acids produced in plants as part of a plant-pesticide, and indicates which factors were considered in that proposal. The information the Agency relied on in considering these factors is part of the public record which was available to the public when EPA issued the proposed exemption from the requirement of a food tolerance. The supplemental notice also identifies the factors that were not considered in the proposal. Because FQPA amended FIFRA by incorporating the section 408 safety standard, commenters should be aware that comments on this supplemental notice may also affect EPA's final determination on the proposed exemptions (59 FR at 60535) under FIFRA for three categories of plant-pesticides: (1) Those that are derived from plants sexually compatible with the recipient plant, (2) those that act primarily by affecting the plant, and (3) those that are coat proteins from plant viruses.

1. *Validity, completeness, and reliability of available data.* EPA considered in 1994 the validity, completeness, and reliability of the available data with regard to nucleic acids produced in plants as part of a plant-pesticide in the proposals (59 FR 60519 and 60542) and has described the evaluation in Unit IV.A. of this supplemental notice.

2. *Nature of toxic effect.* EPA in 1994 considered the nature of the toxic effects caused by nucleic acids produced in plants as part of a plant-pesticide in the proposals (59 FR 60519 and 60542) and has described its evaluation in Unit IV.A. of this supplemental notice.

3. *Relationship of studies to humans.* EPA in 1994 considered the available information concerning the relationship of available data on toxicity of nucleic acids produced in plants as part of a plant-pesticide to humans when it issued the proposal to exempt these substances from the requirement of a tolerance. EPA has summarized its evaluation in Unit IV.A. of this supplemental notice. The nature of the toxic effect of nucleic acids was assessed in light of the known presence of nucleic acids in all consumed foods (Ref. 1) and the history of human consumption of food derived from crop plants, and from products such as meat and milk from animals that consume forage and other crops (e.g., corn and other grains) that contain residues of nucleic acids. EPA determined in the proposal that nucleic acids produced in plants as part of a plant-pesticide do not have a toxic effect and have no adverse effects to humans. Because knowledge of human consumption of food containing nucleic acids was available and adequately addressed the issues of hazard and exposure, the Agency did not use, for the proposed exemption (59 FR 60542), data generated in the laboratory through animal testing.

4. *Dietary consumption patterns.* EPA considered in the 1994 proposal the available information on the varying dietary consumption patterns of major identifiable consumer subgroups as it pertains to nucleic acids in food from plants. As described in the 1994 proposal, nucleic acids are ubiquitous in nature and in the food supply. Nucleic acids that make up the genetic material in plant-pesticides will not alter this baseline consumption pattern of nucleic acids. The Agency's evaluation is summarized in Unit IV.A. of this supplemental notice.

5. *Available information concerning cumulative effects of the pesticide chemical residue and other substances that have a common mechanism of toxicity.* EPA in 1994 examined the available information on the cumulative effect of nucleic acids in food from plants and other substances that have a common mechanism of toxicity. EPA summarizes this information and its analysis in Unit IV.A. of this supplemental notice.

Nucleic acids are widespread in food and have not been associated with direct toxic or pathogenic effects to animals or humans. Because nucleic acids in foods have no human toxicity, no cumulative effects can be identified for nucleic acids produced in plants as part of a plant-pesticide. FQPA also directs the Agency to examine whether there are other substances that have a common mechanism of toxicity with nucleic acids produced in plants as part of a plant-pesticide. Based on available information which indicates that nucleic acids in food have no human toxicity, EPA is not aware of any other substances that might have a common mechanism of human toxicity with nucleic acids produced in plants as part of a plant-pesticide.

EPA is not aware of any substances outside of the food supply that may have a common mechanism of toxicity with nucleic acids produced in plants as part of a plant-pesticide since nucleic acids in plant food are not toxic. EPA has identified nucleic acid analogues as substances having some level of toxicity; however, their mechanism of toxicity is not cumulative with that of naturally occurring nucleic acids (DNA and RNA).

EPA considered the safety of foods containing residues of nucleic acids when it issued the proposal and is not requesting additional comment on that topic. Comments are only requested on EPA's conclusion that there are no substances outside of the food supply that may have a cumulative toxic effect with residues of nucleic acids produced in plants as part of a plant-pesticide.

6. *Aggregate exposures of consumers including non-occupational exposures.* EPA considered the available information on the aggregate exposure level of consumers to nucleic acids produced in plants as part of a plant-pesticide in the 1994 FFDCA and FIFRA proposals (59 FR 60519 and 60542). This included a consideration of exposures from dietary sources (59 FR 60542) as well as from other non-occupational sources (59 FR 60519). As indicated in EPA's policy statement, ''plant-pesticides are likely to present a limited exposure of the pesticidal substance to humans. In most cases, the predominant, if not the only, exposure route will be dietary. Significant respiratory and dermal exposures will be unlikely'' (59 FR at 60513). As explained in the FFDCA and FIFRA proposals and EPA's policy statement (59 FR 60496) and associated dockets, plant-pesticides present negligible exposure of pesticidal substances to humans outside of the dietary route because the substances are in the plant tissue and thus are found either within the plant or in close proximity to the plant. This is particularly true for the nucleic acid portion of plant-pesticides. EPA considered dietary exposure to nucleic acids produced in plants as part of a plant-pesticide in the proposed FFDCA exemption (59 FR 60542) and summarized its evaluation in Unit IV.A. of this supplemental notice.

Despite EPA's belief that, because of the nature of nucleic acids produced in plants as part of a plant-pesticide, there is little likelihood of exposure other than through the dietary route, EPA in this supplemental notice sets forth in greater detail its considerations concerning other exposure routes. With regard to the dermal route of exposure, nucleic acids produced in plants as part of a plant-pesticide may in some cases be present in sap or other exudates from the plant or the food and thus may

present some limited opportunity for dermal exposure to persons coming physically into contact with the plant or raw agricultural food from the plant. Individuals preparing meals are those most likely to experience dermal contact with the substances on a non-occupational basis. However, on a per person basis, the potential amounts involved in these exposures are negligible in comparison to potential exposure through the dietary route. Moreover, substances that occur naturally in food, including the nucleic acids produced in plants as part of plant-pesticides, are unlikely to cross the barrier provided by the skin. This is particularly true for nucleic acids produced in plants as part of a plant-pesticide as they are large polymers.

With regard to exposure through inhalation, nucleic acids produced in plants as part of a plant-pesticide may in some cases be present in pollen and some individuals (those near enough to farms, nurseries, or other plant-growing areas to be exposed to wind-blown pollen) may be exposed, through inhalation, to the pollen. On a per person basis, the potential amounts of pollen involved in these exposures are negligible in comparison to potential exposure through the dietary route. Moreover, it is unlikely that exposure to the pollen is equivalent to exposure to nucleic acids produced in plants as part of a plant-pesticide. In pollen, nucleic acids will likely be integrated into the tissue of the pollen grain and not bound to the surface of the pollen grain. Pollen grains and the substances that occur naturally in pollen are unlikely to cross the barrier provided by the mucous membrane of the respiratory tract and thus are not additive to dietary exposure.

EPA also evaluated potential non-occupational exposures in drinking water. As noted in the preceding paragraphs, the substances in plants or parts of plants, including nucleic acids produced in plants as part of a plant-pesticide, are produced inside the plant itself. Nucleic acids are an integral part of the living tissue of the plant. When the plant dies or a part is removed from the plant, microorganisms colonizing the tissue immediately begin to digest it, using the components of the tissue (including nucleic acids produced in plants as part of plant-pesticides) as building blocks for making their own tissues or for fueling their own metabolisms. Nucleic acids produced in plants as part of a plant-pesticide are subject to the same processes of degradation and decay that all organic matter undergoes. This turnover of biochemical materials in nature through a process of degradation occurs fairly rapidly. Indeed, nucleic acids are highly unstable outside of the cellular environment and are very quickly broken down. Therefore, nucleic acids produced in plants as part of a plant-pesticide do not persist in the environment or bioaccumulate. There is no indication that naturally occurring nucleic acids produced in plants as part of plant-pesticides, are resistant to this degradation. Because of the very rapid turnover of these substances, even if they reach surface waters (e.g., through plant parts falling into bodies of water), they are unlikely to present anything other than a very negligible exposure in drinking water drawn either from surface or ground water sources. Therefore, the potential for non-dietary exposure (i.e., non-food oral, dermal and inhalation) in non-occupational settings is extremely limited and EPA expects such exposure to be negligible.

With regard to exposure to ''other related substances,'' EPA is not aware of any other substances either in food or outside the food supply that may be related, via a common mechanism of toxicity, to nucleic acids produced in plants as part of a plant-pesticide since nucleic acids are not toxic. With regard to non-occupational exposure through routes other than dietary exposure, since nucleic acids have no mechanism of toxicity, EPA is not aware of substances in food or outside the food supply that may be related via a common mechanism of toxicity to the nucleic acids that are produced in plants as a plant-pesticide. No evidence indicates that adverse effects due to aggregate exposure of nucleic acids with these substances through the dietary, non-food oral, dermal and inhalation routes occurs.

EPA considered exposure to nucleic acids produced in plants as a part of a plant-pesticide when it issued the proposal and it is not requesting additional comment on this topic. Comments are requested only on EPA's conclusion that there are no additional substances outside the food supply that are related, via a common mechanism of toxicity, to residues of nucleic acids produced in plants as part of a plant-pesticide for which EPA must consider exposure in aggregate with nucleic acids.

7. *Sensitivities of subgroups*. In 1994, EPA considered available information on the sensitivities of subgroups as it pertains to the nucleic acids produced in plants as part of a plant-pesticide in the proposal (59 FR 60542). The Agency's evaluation is summarized in Unit IV.A. of this supplemental notice.

8. *Naturally occurring estrogen or other endocrine effects*. FFDCA now directs EPA, in establishing an exemption from the requirement of a tolerance, to consider ''such information as the Administrator may require on whether the pesticide chemical may have an effect in humans that is similar to an effect of a naturally occurring estrogen or other endocrine effect'' (21 U.S.C. 346(a)(q)). Congress allowed EPA 2 years to establish a screening program to determine whether certain pesticide chemicals may have estrogenic effects and an additional year to implement the program (21 U.S.C. 408(p)). As part of the screening and implementation process, EPA is determining what information might be required and how it will address estrogenic effects from pesticide residues in general.

Based on available information concerning their structure and mode of action, EPA does not expect nucleic acids produced in plants as part of a plant-pesticide to cause estrogen or other endocrine effects. There is some information on estrogenic effects by exposure to pesticides but the data are limited and do not pertain to nucleic acids. If EPA becomes aware of a potential for estrogenic or endocrine effect from exposure to nucleic acids produced in plants as part of a plant-pesticide, EPA will reexamine this tolerance exemption in light of that information.

9. *Safety factors*. In the 1994 proposal, EPA did not rely on the available animal data in reaching its determination that a tolerance is not necessary to protect the public from nucleic acids produced in plants as part of a plant-pesticide (59 FR 60542). As discussed in Unit IV.A. of this supplemental notice, EPA relied on the long history of safe human consumption of food containing nucleic acids produced in plants as part of a plant-pesticide and in food derived from animals that consume forage and other crops (e.g., corn and other grains). EPA continues to believe that long-term evidence of human consumption, not animal experimentation data, is the appropriate information base for the proposed exemption (59 FR 60542). Because EPA did not rely on animal experimentation data, the Agency did not consider which safety factors would be appropriate to use in assessing risk to humans based on data generated through experiments on animals.

10. *Infants and children*.—a. *Dietary consumption patterns*. In the 1994 proposal (59 FR 60542), EPA considered available information on the dietary consumption pattern of infants and children as it pertains to nucleic acids produced in plants as part of a plant-

pesticide and has summarized the evaluation in Unit IV.A. of this supplemental notice. The range of foods consumed by infants and children is in general more limited than the range of foods consumed by adults. Most newborns rely on milk products for nutrition, although some infants are fed soy-based products. Infants begin as early as 4-months of age to consume specific types of solid foods. Subsequent to 4 months of age, apart from processing to facilitate swallowing, the diets of infants are based on foods consumed by the general adult population albeit in different proportions. As infants and children mature, more and more of the foods normally consumed by adults become part of their diets and the relative proportions of the different types of food consumed changes to more closely resemble an adult diet. All foods consumed by infants and children contain nucleic acids.

b. *Special susceptibility*. In the 1994 proposal (59 FR 60542), EPA considered available information on the potential for susceptibility of infants and children, including pre- and post-natal toxicity, as these factors pertain to the nucleic acids produced in plants as part of a plant-pesticide. There is no scientific evidence that nucleic acids as a component of food would have a different effect on children than they would on the adult population. EPA summarizes its analysis of the effect of consumption in food of nucleic acids on human health in Unit IV.A. of this supplemental notice.

c. *Cumulative effects of residues with other substances with a common mechanism of toxicity*. In the 1994 proposal (59 FR 60542), EPA examined the available information on the cumulative effect of residues of nucleic acids produced in plants as part of a plant-pesticide as well as other substances in food that may have a common mechanism of toxicity. The Agency's consideration in the proposal of the effects of the residues of nucleic acids produced in plants as part of a plant-pesticide on the general population also included consideration of effects for infants and children. See Unit IV.B.5. of this supplemental notice for a discussion of cumulative effects of nucleic acids and other substances that have a common mechanism of toxicity.

Because EPA already considered the safety of food containing residues of nucleic acids produced in plants as part of a plant-pesticide and other constituents of food when it issued the proposal (59 FR 60542), the Agency is not requesting additional comment on that topic. Comments are requested only on EPA's conclusion that there are no substances outside of the food supply with a common mechanism of toxicity to the residues of nucleic acids produced in plants as part of a plant-pesticide.

d. *Margin of safety*. In determining whether the residues of nucleic acids produced in plants as part of a plant-pesticide are safe, FFDCA section 408(b)(2)(C) directs EPA to apply a tenfold margin of safety for the residues and other sources of exposure to infants and children to account for potential pre- and post-natal toxicity and completeness of data on threshold effects with respect to exposure and toxicity to infants and children, unless a different margin will be safe. In proposing the exemption, EPA based its assessment of exposure and toxicity upon reliable information (Ref. 1) including the long history of safe human consumption of food containing residues of nucleic acids produced in plants as part of a plant-pesticide and other substances in food, and the unique nature of plant-pesticides. EPA did not rely on animal data. EPA relied on observations concerning whole food consumption by humans and did not rely on single entity testing, wherein substances are isolated from a plant source, and fed to animals at high concentrations (Ref. 1). EPA relied on the vast base of the human experience with actual food consumption rather than limited testing situations. EPA thus, did not utilize animal or other studies that would yield data that could be subjected to an additional margin of safety. (See Units IV.A. and IV.B.3. of this supplemental notice). As a result, the FQPA amendments to FFDCA do not affect EPA's analysis.

C. Safety Determinations in Light of FFDCA Amendment

Based on the information discussed in the 1994 proposals (59 FR 60496 through 60547), the discussion in Unit IV.A. and the analysis in Unit IV.B. of this supplemental notice, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population in general, and U.S. infants and children, from aggregate exposure to residues of nucleic acids produced in plants as part of a plant-pesticide, including all anticipated dietary exposures and all other exposures for which there is reliable information. Under the proposed exemption from the requirement for a tolerance (59 FR 60542), EPA would exempt residues of nucleic acids produced in plants as part of a plant-pesticide. Extensive use and experience show the safety of foods containing these substances. No evidence, in the many years of human experience with the growing and consumption of food from plants containing residues of nucleic acids produced in plants as part of a plant-pesticide, indicates that adverse effects due to aggregate exposure through the dietary, non-food oral, dermal and inhalation routes occur.

The conclusion that residues of nucleic acids produced in plants as part of a plant-pesticide should be exempt from tolerance requirements under the FFDCA section 408 safety standard also lends support to EPA's proposed FIFRA exemptions (59 FR 60519) with respect to human dietary risks. These exemptions are: (1) Plant-pesticides that are derived from a plant that is sexually compatible with the recipient plant, (2) plant-pesticides that act primarily by affecting the plant, and (3) plant-pesticides that are coat proteins from plant viruses (59 FR at 60535). In the FIFRA proposal, EPA utilized two criteria to determine whether plant-pesticides should be exempt; (1) whether they posed a low probability of risk, and (2) whether they caused unreasonable adverse effects on the environment. Based upon the determination that residues of the three categories of pesticidal substances subject to the proposed exemptions (59 FR 60535) and the nucleic acid component of a plant-pesticide (59 FR 60542) meet the FFDCA section 408 safety test, EPA concludes plant-pesticides in the three proposed categories of exemption would pose only a low probability of human dietary risk and also would not pose an unreasonable adverse effect with respect to such risks.

D. Other Considerations.

When the Agency proposed to establish an exemption from the requirement of a tolerance for nucleic acids produced in plants as part of a plant-pesticide (59 FR 60542), EPA did not propose any numerical limitation on the amount of nucleic acids that could be present in food containing these residues. EPA consulted in 1994 with the Department of Health and Human Services (DHHS) in developing the proposed exemption and this supplemental notice and will consult with the Secretary of HHS prior to issuing the final rule. Because the 1994 proposal was an exemption from the requirement of a tolerance, the Agency has concluded that an analytical method for detecting and measuring the levels of the residues of nucleic acids in or on food is not required.

V. Comments

A. Confidential Business Information

Information submitted as a comment concerning this supplemental notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

B. 30-Day Comment Period

EPA is allowing a 30–day comment period because it has determined that such a period will provide the public with an adequate opportunity to respond to the additional issues raised in this supplemental notice. FFDCA and FIFRA do not specify a comment period for this type of notice. EPA has decided that a 30–day comment period is reasonable because this supplemental notice raises very few new issues that were not already available for public comment. As discussed in Unit IV. of this supplemental notice, EPA effectively considered most of the factors required by the FQPA amendments of FFDCA and FIFRA relevant to the proposed exemptions when it issued the proposed package of notices describing EPA's approach in 1994 (59 FR 60496, 60519, 60535, 60542 and 60545). At that time, the public had an opportunity to review both the Agency's rationale for the proposals and the underlying support documents during a 90–day public comment period. Only a limited number of new issues have been raised by the FQPA amendments to FFDCA and FIFRA and the Agency continues to rely upon the information already in the docket for the 1994 proposals and thus 30 days should provide adequate time for public comment. In addition, EPA believes that it is in the interest of the public to publish the final exemption from the requirement of a tolerance in a timely manner.

C. Request for Comments

Interested persons are invited to submit written comments on the new issues raised in this supplemental notice specifically on:

(1) EPA's conclusion that there are no substances outside of the food supply that may have a cumulative toxic effect with residues of nucleic acids produced in plants as part of a plant-pesticide.

(2) EPA's conclusion that there are no additional substances outside the food supply that are related, via a common mechanism of toxicity, to residues of nucleic acids produced in plants as part of a plant-pesticide for which EPA must consider exposure in aggregate with nucleic acids.

Commenters who possess information on nucleic acids causing estrogenic effects are requested to send such information to EPA.

In this supplemental notice, EPA describes in greater detail the rationale supporting the statement made in the 1994 **Federal Register** (59 FR at 60513) that ''plant-pesticides are likely to present a limited exposure of pesticidal substances to humans. In most cases, the predominant, if not the only route of exposure will be dietary. Significant respiratory and dermal exposures will be unlikely.'' No comments were received on this statement during the official comment period. Commenters may comment on this more detailed rationale.

In this supplemental notice, EPA also describes in greater detail how the rationale presented in the 1994 **Federal Register** (59 FR at 60538) concerning the safety for human consumption of food containing nucleic acids produced in plants as part of a plant-pesticide applies to infants and children. No comments were received on this statement during the official comment period. Commenters may comment on this more detailed rationale specifically addressing infants and children as part of the larger human population.

VI. Public Docket

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number number ''OPP–300371A'' (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 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–300371A.'' Electronic comments on this supplemental notice may be filed online at many Federal Depository Libraries.

VII. References

(1) International Food Biotechnology Council, 1990. Biotechnologies and food; Assuring the safety of foods produced by genetic modification. In: *Regulatory Toxicology and Pharmacology*. Vol. 12. Academic Press, New York.

VIII. Regulatory Assessment Requirements

This supplemental notice merely seeks additional comments on the proposed rules with regard to the potential impact that the new statutory amendments imposed by the August 3, 1996 Food Quality Protection Act (FQPA) might have on the provisions as proposed. As such, this notice does not contain any new proposed requirements that would require additional consideration by the Office of Management and Budget (OMB) under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993) or the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*. It does not require any other action under Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The Agency's activities related to these regulatory assessment requirements are discussed in the proposed rules.

EPA did not consider Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) at the proposal stage because the proposed rules were issued prior to its enactment. Although this supplemental notice is not subject to UMRA because it neither proposes or finalizes any regulatory requirements, the applicability of the UMRA requirements will be addressed in the final rules.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Plants, Plant-pesticides, Reporting and recordkeeping requirements.

Dated: May 7, 1997.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97–12786 Filed 5–15–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300367A; FRL–5716–6]

RIN 2070-AC02

Plant-Pesticides; Viral Coat Proteins; Supplemental Notice of Proposed Rulemaking

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This document announces the availability of information for additional public comment regarding the proposed exemption from the requirement of a tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA) for residues of coat proteins from plant viruses when these coat proteins are produced and used as plant-pesticides in plants or plant parts used as raw agricultural commodities. Comments on this document may also affect EPA's final determination on a proposed exemption under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for this same category of plant-pesticides. In 1994, EPA proposed to exempt from the requirement of a tolerance viral coat proteins produced in plants as part of a plant-pesticide because a tolerance would not be necessary to protect the public health. Since publication of the proposal, Congress enacted the Food Quality Protection Act (FQPA) which amended FFDCA and FIFRA. EPA is issuing this document today to provide the public with an opportunity to comment on EPA's analysis of how certain FQPA amendments to FFDCA and FIFRA apply to the proposed exemption from the requirement of a tolerance for viral coat proteins produced in plants as part of a plant-pesticide. EPA believes that it considered most of the substantive issues associated with the FQPA amendments when it issued the proposal in 1994. EPA is thus, in this document, specifically seeking comment only on its evaluation of the requirements imposed by FQPA that the Agency did not address in that proposal.

DATES: Comments, identified by the docket number ''OPP–300367A,'' must be received on or before June 16, 1997.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person deliver comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under Unit VI. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Elizabeth Milewski, Office of Science, Coordination and Policy, Office of Prevention, Pesticides and Toxic Substances (7101), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260-6900, e-mail: milewski.elizabeth@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA issued in the November 23, 1994 **Federal Register** a package of five separate **Federal Register** proposals (59 FR 60496, 60519, 60535, 60542 and 60545) (FRL–4755–2, FRL–4755–3, FRL–4758–8, FRL–4755–5, and FRL–4755–4) which together described EPA's approach to substances produced in plants that enable the plants to resist pests or disease. EPA's package of proposals indicated that these substances are pesticides under section 2 of FIFRA (7 U.S.C. 136(u)) if they are ''intended for preventing, destroying, repelling, or mitigating any pest'' or if they are '' . . . intended for use as a plant regulator, defoliant, or desiccant'' regardless of whether the pesticidal capabilities evolved in the plants or were introduced by breeding or through the techniques of modern biotechnology. These substances, and the genetic material necessary to produce them, were designated ''plant-pesticides'' by EPA in the November 23, 1994 **Federal Register** documents. The notices defined a ''plant-pesticide'' as ''a pesticidal substance that is produced in a living plant and the genetic material necessary for the production of the pesticidal substance where the pesticidal substance is intended for use in the living plant'' (59 FR at 60534). Viral coat proteins produced in plants for viral coat protein mediated viral resistance are considered plant-pesticides because of their intended role in plant resistance to viral infection.

One of the five notices (59 FR 60545) proposed to exempt viral coat proteins produced in plants as part of a plant-pesticide, or segments of coat proteins, from the FFDCA (21 U.S.C. 346a) requirement of a tolerance based upon an evaluation of the potential for new dietary exposures to the substances when they are produced in plants, or in plant parts, used as food or feed. EPA stated in the proposed exemption that a tolerance is not necessary to protect the public health for these pesticidal substances because no new dietary exposures are likely to occur for viral coat proteins produced in plants as part of a plant-pesticide. For pesticidal substances in this category, many years of human experience with consumption of food containing plant viruses suggest that these pesticidal substances present negligible risk. Specifically, EPA proposed that ''residues of coat proteins from plant viruses, or segments of the coat proteins, produced in living plants as plant-pesticides are exempt from the requirement of a tolerance'' (59 FR at 60547).

This supplemental notice addresses the coat protein portion of the plant-pesticide produced in food plants. A companion supplemental notice issued elsewhere in today's **Federal Register** addresses the proposed exemption for the nucleic acid component of plant-pesticides with regard to the FQPA amendments to FFDCA. Because FQPA modified FIFRA (7 U.S.C. 136 *et seq.*) by incorporating the FFDCA safety standard into the FIFRA test for determining whether a pesticide poses an unreasonable adverse effect, comments on this supplemental notice may also affect EPA's final determination on a proposed exemption under FIFRA (59 FR at 60535) for plant-pesticides that are coat proteins from plant viruses.

EPA is publishing this supplemental notice to ensure that the public has had adequate opportunity to comment on certain new considerations raised by the FQPA amendments to FFDCA as these considerations relate to the proposed exemption from a tolerance for residues of viral coat proteins produced in plants as part of a plant-pesticide. In evaluating a pesticide chemical residue for exemption from FFDCA tolerance requirements, EPA must now explicitly address certain factors, and make a determination that there is a reasonable certainty that aggregate exposure to the residue will cause no harm to the public. The factors to be considered are iterated in Unit II. of this supplemental notice. EPA's evaluation of these factors

relative to the proposed exemption (59 FR 60545) is contained in Unit IV. of this supplemental notice. Consistent with FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. In today's supplemental notice, EPA requests comment only on the new conclusions identified in Unit V.C. of this supplemental notice.

In light of FQPA, EPA is engaged in a process, including consultation with registrants, states, and other interested stakeholders, to make decisions on the new policies and procedures that will be appropriate as a result of enactment of FQPA. In establishing this exemption from the requirement of a tolerance for residues of viral coat proteins produced in plants as part of a plant-pesticide, EPA does not intend to set precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. This exemption from the requirement of a tolerance will not restrict EPA's options with regard to general procedures and policies for implementation of the amended FFDCA section 408.

II. Statutory Authority

Under FFDCA, EPA regulates pesticide chemical residues by establishing tolerances limiting the amounts of residues that may be present in food, or by establishing exemptions from the requirement of a tolerance for such residues. Pesticide chemical residues subject to regulation under FFDCA are defined by reference to the definition of pesticide under FIFRA. FFDCA section 201(q)(1) defines a ''pesticide chemical residue'' to mean the residue in or on food of a pesticide chemical or other added substance resulting primarily from the metabolism or degradation of a pesticide chemical (21 U.S.C. 321 (q)(2)). A ''pesticide chemical'' means ''any substance that is a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act, including all active and inert ingredients of such pesticide'' (21 U.S.C. 321(q)(1)).

FIFRA authorizes EPA to regulate the sale and distribution of pesticides in the United States and to exempt a pesticide from the requirements of FIFRA if it is not of a character requiring regulation (7 U.S.C. 136a(a) and 136w(b)). FIFRA section 2(u) defines ''pesticide'' as: (1) ''any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer'' (7 U.S.C. 136(u)).

FQPA amends both FFDCA and FIFRA. FQPA, which took effect on August 3, 1996, among other things, amends FIFRA such that a registration cannot be issued for a pesticide to be used on or in food unless the residue of the pesticide in food qualifies for a tolerance or exemption from the requirement for a tolerance. FQPA modified FIFRA section 2(bb) by incorporating the FFDCA section 408 safety standard into the test for determining whether a pesticide poses an unreasonable adverse effect (7 U.S.C. 136(bb)). FIFRA section 2(bb) defines the term ''unreasonable adverse effects on the environment'' to mean (1) any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or (2) a human dietary risk from residues that result from a use of a pesticide in or on any food inconsistent with the standard under section 408 of the FFDCA. Thus, a pesticide used in or on food that does not meet the FFDCA section 408 safety standard also would pose an unreasonable adverse effect under FIFRA and would not qualify for an exemption from the requirements of FIFRA under FIFRA section 25(b)(2).

FQPA amends FFDCA section 408(c)(2)(A)(i) to allow EPA to establish an exemption from the requirement of a tolerance for a ''pesticide chemical residue'' only if EPA determines that the exemption is ''safe'' (21 U.S.C. 346a(c)(2)(A)(i)). Section 408(c)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information'' (21 U.S.C. 346a(c)(2)(A)(ii)). This includes exposure through drinking water, but does not include occupational exposure. In establishing an exemption from the requirement of a tolerance, FFDCA section 408(c), like the statute prior to FQPA, does not require EPA to consider benefits that might be associated with use of the pesticide chemical.

FFDCA section 408 requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue'' (21 U.S.C. 346a(b)(2)(C)(ii)(I)) and (c)(2)(B). Section 408(b)(2)(D) specifies other, general factors EPA is to consider in establishing an exemption. Section 408(c)(3)(B) prohibits an exemption unless there is either a practical method for detecting and measuring levels of pesticide chemical residue in or on food or there is no need for such a method (21 U.S.C. 346a(c)(3)(B)).

Specifically, EPA must consider the following in deciding whether to grant an exemption:

1. The validity, completeness and reliability of the available data from studies of the pesticide chemical and pesticide chemical residue.
2. Nature of any toxic effect shown to be caused by the pesticide chemical or residues in studies.
3. Available information concerning the relationship of the results of such studies to human risk.
4. Available information concerning the dietary consumption patterns of consumers (and major identifiable subgroups of consumers).
5. Available information concerning the cumulative effects of such residues and other substances that have a common mechanism of toxicity.
6. Available information concerning the aggregate exposure levels of consumers to the pesticide chemical residue and to other related substances, including dietary exposure and non-occupational exposures.
7. Available information concerning the variability of the sensitivities of major identifiable subgroups of consumers.
8. Such information as the Administrator may require on whether the pesticide chemical may have an effect in humans that is similar to an effect produced by a naturally-occurring estrogen or other endocrine effects.
9. 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 (21 U.S.C. 346a(b)(2)(D)).

Additionally, with respect to exposure of infants and children, consistent with section 408(b)(2)(C), EPA must assess the risk of the pesticide based on available information concerning:

1. Consumption patterns that are likely to result in disproportionately high consumption of food with pesticide residues.
2. Special susceptibility of infants and children to such residues.
3. Cumulative effects of residues with other substances that have a common mechanism of toxicity (21 U.S.C. 346a(b)(2)(C) and (c)(2)(B)).

III. Summary of Proposed Rule

In the November 23, 1994 **Federal Register**, EPA proposed to exempt from

the requirement of a tolerance coat proteins from plant viruses, or segments of such proteins when these proteins, or segments of these proteins, are produced in plants for the purpose of protecting plants against viral disease. Coat proteins are those substances that viruses produce to encapsulate and protect their genetic material. When the genetic material encoding the coat protein is introduced into a plant's genome, the plant is able to resist infections by the virus donating the genetic material for the coat protein (as well as infections by virus strains closely related to the donor virus). This resistance is termed viral coat protein mediated resistance or vcp-mediated resistance.

IV. Risk Assessment and Safety Determinations

A. Risk Assessment in Proposal

EPA's rationale for its 1994 proposal for an exemption from the requirement of a tolerance for viral coat proteins was based on the following points: (1) Virus-infected plants have always been a part of the human and domestic animal food supply since most crops are frequently infected with plant viruses and food from these crops have been and are being consumed without detectable adverse human health effects. (2) Plant viruses have never been shown to be infectious to humans, including children and infants, or mammals. Plant viruses are not able to replicate in mammals or other vertebrates, limiting the possibility of human infection. In addition, this exemption applies only to the portion of the viral genome coding for the whole coat protein or a segment of the coat protein which will be expressed in the plant. The coat protein or a segment of the coat protein by itself is incapable of forming infectious particles. Since whole, intact plant viruses are not known to cause deleterious human health effects, it is reasonable to assume that a subunit of these viruses likewise will not cause adverse human health effects when consumed at rates currently found in the food supply.

In developing its regulatory approach for plant-pesticides, EPA requested the advice of a subpanel, composed of experts in the relevant scientific disciplines, of the FIFRA Scientific Advisory Panel (SAP). On December 18, 1992, the SAP subpanel was convened to review a draft policy statement for plant-pesticides and respond to a series of scientific questions posed by the Agency. One question that the Agency asked the SAP subpanel was whether coat proteins from plant viruses might present a dietary risk. In answer to the question, the subpanel stated that ''[s]ince viruses are ubiquitous in the agricultural environment at levels higher than will be present in transgenic plants, and there has been a long history of 'contamination' of the food supply by virus coat protein, there is [a] scientific rationale for exempting transgenic plants expressing virus coat protein from the requirement of a tolerance.''

As described in the proposed regulation (59 FR 60545), entire infectious particles of the plant viruses, including the coat protein component, have been and are being consumed by humans with no observed adverse effects. Virus-infected food plants have always been a part of the human and domestic animal food supply (Refs. 1, 2, 3, and 4). For example, at the beginning of this century virtually every commercial cultivar of potatoes grown in the United States and Europe was infected with either one or some complex of potato viruses (Ref. 1).

All plants have viruses that can infect them. While some viruses may be limited to certain tissues (e.g., the vascular system) or organs (e.g., roots), most plant viruses are found throughout the various organs and tissues of plants. Viruses, including the coat protein component, are found in the fruit, leaves, and stems of most plants. The long history of inadvertent mammalian consumption of the entire plant virus particle in foods with no observed ill effects presents a strong argument to support the human and domestic animal safety of the entire virus in foods. Concentrations of the virus particles in infected plants vary widely according to the host plant, length of infection, and the reproductive life cycle of the virus itself. In general, EPA anticipates that the amounts of viral coat protein consumed in the diet due to the production of viral coat proteins in vcp-mediated resistance will be similar to the amounts of viral coat proteins currently consumed.

Plant pathogenic viruses have never been shown capable of infecting or replicating in vertebrates (Refs. 1, 2, and 5). Intact, infectious, whole plant viruses, therefore, are not infectious to humans, including children and infants. Given that the complete virus is not infectious to vertebrates, it is reasonable to assume that a noninfectious subcomponent (i.e., a coat protein or a segment of a coat protein) of the virus would not be hazardous to humans or animals.

B. Risk Assessment in Light of Amendment to FFDCA

After EPA issued its proposed exemption from the requirement of a tolerance for viral coat proteins produced in plants as part of a plant-pesticide (59 FR 60545), Congress enacted FQPA and amended certain FFDCA provisions governing pesticide chemical residues and FIFRA provisions governing pesticides (See Unit II. of this supplemental notice). Congress revised the specific wording of the section 408 standard for exemptions and provided more specific guidance regarding some of the factors that EPA should consider in establishing such exemptions (see Unit II. of this supplemental notice). When EPA proposed the exemption for residues of viral coat proteins produced in plants as part of a plant-pesticide, or segments of such proteins, it considered most of the safety factors spelled out in FQPA even though the Agency may not have explicitly discussed all those factors using the terminology specified in the FQPA amendments. This supplemental notice describes how the Agency took account of most of the FQPA factors in issuing its 1994 proposal to exempt viral coat proteins, or segments of such proteins, produced in plants as part of a plant-pesticide and indicates which factors were considered in that proposal. The information the Agency relied on in considering these factors is part of the public record which was available to the public when EPA issued the proposed exemption from the requirement of a food tolerance. This supplemental notice also identifies the factors that were not considered in the proposal. Because FQPA amended FIFRA by incorporating the section 408 safety standard, commenters should be aware that comments on this supplemental notice may also affect EPA's final determination on the proposed exemption (59 FR 60519) under FIFRA for viral coat proteins produced in plants as plant-pesticides.

1. *Available data*. EPA considered in 1994, the validity, completeness and reliability of the available data with regard to coat proteins from plant viruses in the proposals (59 FR 60519 and 60545) and has summarized the evaluation in Unit IV.A. of this supplemental notice.

2. *Nature of toxic effect*. EPA in 1994 considered the nature of the toxic effects caused by viral coat proteins produced in plants as part of a plant-pesticide in the proposals (59 FR 60519 and 60545) and has summarized its evaluation in Unit IV.A. of this supplemental notice.

3. *Relationship of studies to humans*. EPA in 1994 considered the available information concerning the relationship to humans of toxic effects of viral coat proteins produced in plants as part of a plant-pesticide when it issued the proposals (59 FR 60519 and 60545) and has summarized that evaluation in Unit IV.A. of this supplemental notice. EPA based its evaluation on the history of human consumption of food derived from crop plants, and from products such as meat and milk from animals that consume forage and other crops (e.g., corn and other grains) that contain residues of pesticidal substances that are the subject of the proposed exemption. Because knowledge of human consumption of food from virus infected crop plants (as well as meat and milk products derived from animals eating such plants) was available and adequately addressed the issues of hazard and exposure, the Agency did not use, for the proposed exemption (59 FR 60545), data generated in the laboratory through animal testing.

4. *Dietary consumption patterns*. EPA considered in the 1994 proposal the available information on the varying dietary consumption patterns of major identifiable consumer subgroups as it pertains to consumption of food from virus infected plants. The Agency's evaluation is summarized in Unit IV.A. of this supplemental notice.

5. *Available information concerning cumulative effects of the pesticide chemical residue and other substances that have a common mechanism of toxicity*. EPA has examined the available information on the cumulative effect of consuming virus infected plants and other substances in plants that may have a common mechanism of human toxicity. EPA summarizes this information and its analysis in Unit IV.A. of this supplemental notice.

Viral coat proteins are nontoxic proteins widespread in food. They have not been associated with toxic or pathogenic effects to animals or humans. Because viral coat proteins in foods have no known human toxicity, no cumulative effects can be identified for viral coat proteins produced in plants as part of a plant-pesticide. FQPA also directs the Agency to examine whether there are other substances that have a common mechanism of toxicity with residues of viral coat proteins produced in plants as part of a plant-pesticide. Based on available information which indicates that viral coat proteins in food have no human toxicity, EPA is not aware of any other substances that might have a common mechanism of human toxicity with residues of viral coat proteins produced in plants as part of a plant-pesticide. Experience with residues of viral coat proteins in the current food supply gives no indication of human or animal toxicity. If information becomes available that indicates this finding is not appropriate, EPA will consider the validity of the new information and act to amend this tolerance exemption as needed.

EPA is not aware of any substances outside of the food supply that may have a common mechanism of toxicity with residues of viral coat proteins produced in plants as part of a plant-pesticide since viral coat proteins are not toxic to humans or animals.

EPA considered the safety of foods containing residues of viral coat proteins when it issued the proposal and is not requesting additional comment on that topic. Comments are only requested on EPA's conclusion that there are no substances outside of the food supply that may have a cumulative toxic effect with residues of viral coat proteins produced in plants as part of a plant-pesticide.

6. *Aggregate exposures including non-occupational exposures*. EPA has considered the available information on the aggregate exposure level of consumers to viral coat proteins produced in plants as part of a plant-pesticide in the 1994 FFDCA and FIFRA proposals (59 FR 60519 and 60545). This included a consideration of exposures from dietary sources (59 FR 60545) as well as from other non-occupational sources (59 FR 60519). As indicated in EPA's policy statement, ''plant-pesticides are likely to present a limited exposure of the pesticidal substance to humans. In most cases, the predominant, if not the only, exposure route will be dietary. Significant respiratory and dermal exposures will be unlikely'' (59 FR at 60513). As explained in the FFDCA and FIFRA proposals and EPA's policy statement (59 FR 60496) and associated dockets, plant-pesticides present negligible exposure of pesticidal substances to humans outside of the dietary route because the substances are in the plant tissue and thus are found either within the plant or in close proximity to the plant. EPA considered dietary exposure to residues of viral coat proteins produced in plants as part of a plant-pesticide in the proposed FFDCA exemption (59 FR 60545) and summarized its evaluation in Unit IV.A. of this supplemental notice.

Despite EPA's belief that, because of the nature of viral coat proteins produced in plants as part of a plant-pesticide, there is little likelihood of exposure other than through the dietary route, EPA in this supplemental notice sets forth in greater detail its considerations concerning other exposure routes. With regard to the dermal route of exposure, viral coat proteins produced in plants as part of a plant-pesticide may in some cases be present in sap or other exudates from the plant or the food and thus may present some limited opportunity for dermal exposure to persons coming physically into contact with the plant or raw agricultural food from the plant. Individuals preparing meals are those most likely to experience dermal contact with the substances on a non-occupational basis. However, on a per person basis, the potential amounts involved in these exposures are negligible in comparison to potential exposure through the dietary route. Moreover, substances that occur naturally in food, including viral coat proteins produced in plants as part of a plant-pesticide, are unlikely to cross the barrier provided by the skin.

With regard to exposure through inhalation, viral coat proteins produced in plants as part of a plant-pesticide may in some cases be present in pollen and some individuals (those near enough to farms, nurseries or other plant-growing areas to be exposed to wind-blown pollen) may be exposed, through inhalation, to the pollen. On a per person basis, the potential amounts of pollen involved in these exposures are negligible in comparison to potential exposure through the dietary route. It is unlikely that exposure to the pollen is equivalent to exposure to viral coat proteins produced in plants as part of a plant-pesticide. When present in pollen, the viral coat proteins produced in plants as part of plant-pesticides will likely be integrated into the tissue of the pollen grain and not likely to be bound to the surface of the pollen grain. Pollen grains and the substances that occur naturally in pollen are unlikely to cross the barrier provided by the mucous membrane of the respiratory tract and thus are not additive to dietary exposure. Some viruses are transmitted by wind-borne vectors, i.e., pollen or fungal spores and individuals near enough to farms, nurseries or other plant-growing areas to be exposed to these wind-blown vectors may be exposed, through inhalation, to the whole virus particle. Since no evidence suggests that exposure to whole plant viruses borne by wind-blown pollen or fungal spores results in adverse effects, it is unlikely that exposure to pollen that may contain viral coat proteins produced in plants as part of a plant-

pesticide would result in adverse effects.

EPA also evaluated potential non-occupational exposures in drinking water. As noted in the preceding paragraphs, most substances in plants or parts of plants, including viral coat proteins produced in plants as part of a plant-pesticide, are found only inside the plant itself. Viral coat proteins produced in plants as part of a plant-pesticide are an integral part of the living tissue of the plant. When the plant dies or a part is removed from the plant, microorganisms colonizing the tissue immediately begin to digest it, using the components of the tissue (including viral coat proteins produced in plants as part of a plant-pesticide) as building blocks for making their own tissues or for fueling their own metabolisms. Viral coat proteins, or segments of these proteins, produced in plants as part of a plant-pesticide are subject to the same processes of degradation and decay that all organic matter undergoes. This turnover of biochemical materials in nature through a process of degradation occurs fairly rapidly. Therefore, viral coat proteins produced in plants as part of a plant-pesticide do not persist in the environment or bioaccumulate. There is no indication that naturally occurring plant biochemical compounds, including viral coat proteins produced in plants as part of plant-pesticides, are particularly resistant to this degradation. Because of the rapid turnover of these substances, even if they reach surface waters, they are unlikely to present anything other than a very negligible exposure in drinking water drawn from either surface or ground water sources. Therefore, the potential for non-dietary exposure (i.e., non-food oral, dermal and inhalation) in non-occupational settings is limited and EPA expects such exposure to be negligible.

With regard to exposure to ''other related substances,'' EPA is not aware of any other substances either in food or outside the food supply that may be related, via a common mechanism of toxicity, to viral coat proteins produced in plants as part of a plant-pesticide since viral coat proteins are not toxic to humans or animals. With regard to non-occupational exposure through routes other than dietary exposure, since viral coat proteins are not toxic, EPA is not aware of substances outside the food supply that may be related via a common mechanism of toxicity to the viral coat proteins produced in plants as part of a plant-pesticide. No evidence indicates that adverse effects due to aggregate exposure of viral coat proteins with such substances through the dietary, non-food oral, dermal and inhalation routes occurs.

EPA considered exposure to residues of viral coat proteins produced in plants as part of a plant-pesticide when it issued the proposal and is not requesting additional comment on that topic. Comments are only requested on EPA's conclusion that there are no substances outside of the food supply that are related, via a common mechanism of action, to residues of viral coat proteins produced in plants as part of a plant-pesticide for which EPA must consider exposure in aggregate with viral coat proteins.

7. *Sensitivities of subgroups*. In 1994, EPA considered available information on the sensitivities of subgroups as it pertains to viral coat proteins produced in plants as part of a plant-pesticide in the proposal (59 FR 60545). The Agency's evaluation is summarized in Unit IV.A. of this supplemental notice.

8. *Naturally occurring estrogen or other endocrine effects*. FFDCA now directs EPA, in establishing an exemption from the requirement of a tolerance, to consider ''such information as the Administrator may require on whether the pesticide chemical may have an effect in humans that is similar to an effect of a naturally-occurring estrogen or other endocrine effect'' (21 U.S.C. 346(a)(q)). Congress allowed EPA 2 years to establish a screening program to determine whether certain pesticide chemicals may have estrogenic effects and an additional year to implement the program (21 U.S.C. 408(p)). As part of the screening and implementation process, EPA is determining what information might be required and how it will address estrogenic effects from pesticide residues in general.

There is some information on estrogenic effects by exposure to pesticides but the data are limited and do not pertain to viral coat proteins. Based on available information concerning the presence of viruses in the food supply with no detectable adverse human health effects, EPA does not expect viral coat proteins expressed in plants as part of a plant-pesticide to cause estrogen or other endocrine effects. If EPA becomes aware of a potential for estrogenic or endocrine effect from exposure to viral coat proteins produced in plants as part of a plant-pesticide, EPA will reexamine this tolerance exemption in light of that information.

9. *Safety factors*. In the 1994 proposal, EPA did not rely on the available animal data in reaching its determination that a tolerance is not necessary to protect the public from viral coat proteins produced in plants as part of a plant-pesticide (59 FR 60545). As discussed in Unit IV.A. of this supplemental notice, EPA relied on the long history of safe human consumption of food containing plant viruses and consumption of food derived from animals that consume forage and other crops (e.g., corn and other grains) that are also likely to contain plant viruses. EPA continues to believe that long-term evidence of human consumption, not animal experimentation data, is the appropriate information base for the proposed exemption (59 FR 60545). Because EPA did not rely on animal experimentation data, the Agency did not consider which safety factors would be appropriate to use in assessing risk to humans based on data generated through experiments on animals.

10. *Infants and children*.—a. *Dietary consumption patterns*. In the 1994 proposal (59 FR 60545), EPA considered available information on the dietary consumption pattern of infants and children as it pertains to viral coat proteins in food and has summarized the evaluation in Unit IV.A. of this supplemental notice. The range of foods consumed by infants and children is in general more limited than the range of foods consumed by adults. Most newborns rely on milk products for nutrition, although some infants are fed soy-based products. Infants begin as early as 4-months of age to consume specific types of solid foods containing residues of pesticidal substances that are the subject of the proposed exemption. Subsequent to 4 months of age, apart from processing to facilitate swallowing, the diets of infants are based on foods consumed by the general adult population albeit in different proportions. As infants and children mature, more and more of the foods normally consumed by adults become part of their diets and the relative proportions of the different types of food consumed changes to more closely resemble an adult diet. Since plant viruses are ubiquitous in plant foods, EPA concluded that infants and children are exposed as part of a normal diet to viral coat proteins. There is no evidence that such exposure leads to any harm.

b. *Special susceptibility*. In the 1994 proposal (59 FR 60545), EPA considered available information on the potential for susceptibility of infants and children, including pre- and post-natal toxicity, as these factors pertain to viral coat proteins produced in plants as part of a plant-pesticide. There is no scientific evidence that viral coat proteins as a component of food would have a different effect on children than

they would on the adult population. EPA summarizes its analysis of the effect of consumption in food of viral coat proteins on human health in Unit IV.A. of this supplemental notice.

c. *Cumulative effects of residues with other substances with a common mechanism of toxicity*. In the 1994 proposal (59 FR 60545), EPA examined the available information on the cumulative effect of residues of viral coat proteins produced in plants as part of a plant-pesticide as well as other substances in food that may have a common mechanism of toxicity. The Agency's consideration in the proposal of the effects of the residues of viral coat proteins produced in plants as part of a plant-pesticide on the general population also included consideration of effects for infants and children. See Unit IV.B.5. of this supplemental notice for a discussion of cumulative effects of viral coat proteins and other substances that have a common mechanism of toxicity.

EPA considered the safety of foods containing residues of viral coat proteins when it issued the proposal and it is not requesting additional comment on that topic. Comments are only requested on EPA's conclusion that there are no substances outside of the food supply that may have a cumulative toxic effect with residues of viral coat proteins produced in plants as part of a plant-pesticide.

d. *Margin of safety*. In determining whether the residues of viral coat proteins produced in plants as part of a plant-pesticide are safe, FFDCA section 408(b)(2)(C) directs EPA to apply a tenfold margin of safety for the residues and other sources of exposure to infants and children to account for potential pre- and post-natal toxicity and completeness of data on threshold effects with respect to exposure and toxicity to infants and children, unless a different margin will be safe. In proposing the exemption, EPA based its assessment of exposure and toxicity upon reliable information including the long history of safe human consumption of food containing residues of viral coat proteins produced in plants as part of a plant-pesticide and other substances in food, and the unique nature of plant-pesticides. EPA did not rely on animal data. EPA relied on observations concerning whole food consumption by humans and did not rely on single entity testing, wherein animals are exposed to high concentrations of substances isolated from a plant source. EPA relied on the vast base of the human experience with actual food consumption rather than limited testing situations involving exposure to high concentrations of viral coat proteins. EPA, thus, did not utilize animal or other studies that would yield data that could be subjected to an additional margin of safety. (See Units IV.A. and IV.B.3. of this supplemental notice). As a result, the FQPA amendments to FFDCA do not affect EPA's analysis.

C. Safety Determinations in Light of FFDCA Amendment.

Based on the information discussed in the 1994 proposals (59 FR 60496 through 60547), the discussion in Unit IV.A. and the analysis in Unit IV.B. of this supplemental notice, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population in general, and U.S. infants and children, from aggregate exposure to residues of viral coat proteins produced in plants as part of a plant-pesticide, including all anticipated dietary exposures and all other exposures for which there is reliable information. Under the proposed exemption from the requirement for a tolerance (59 FR 60545), EPA would exempt residues of viral coat proteins produced in plants as part of a plant-pesticide. Extensive use and experience show the safety of foods containing these substances. No evidence, in the many years of human experience with the growing and consumption of food from plants containing viral coat proteins, indicates that adverse effects due to aggregate exposure through the dietary, non-food oral, dermal and inhalation routes occur.

The conclusion that residues of viral coat proteins produced in plants as part of a plant-pesticide should be exempt from tolerance requirements under the FFDCA section 408 safety standard also lends support to one of EPA's proposed FIFRA exemptions (59 FR 60519) with respect to human dietary risks: plant-pesticides that are coat proteins from plant viruses (59 FR at 60535). In the FIFRA proposal, EPA utilized two criteria to determine whether plant-pesticides should be exempt; (1) whether they posed a low probability of risk, and (2) whether they caused unreasonable adverse effects on the environment. Based upon the determination that residues of viral coat proteins (59 FR 60545) and the nucleic acid component of a plant-pesticide (59 FR 60542) meet the FFDCA section 408 safety test, EPA concludes viral coat proteins produced in plants as part of a plant-pesticide would pose only a low probability of human dietary risk and also would not pose an unreasonable adverse effect with respect to such risks.

D. Other Considerations

When the Agency proposed to establish an exemption from the requirement of a tolerance for viral coat proteins produced in plants as part of a plant-pesticide (59 FR 60545), EPA did not propose any numerical limitation on the amount of viral coat proteins that could be present in food containing these residues. EPA consulted in 1994 with the Department of Health and Human Services (DHHS) in developing the proposed exemption and this supplemental notice, and will consult with the Secretary of HHS prior to issuing the final rule. Because the 1994 proposal was an exemption from the requirement of a tolerance, the Agency has concluded that an analytical method for detecting and measuring the levels of the residues of viral coat proteins in or on food is not required.

V. Comments

A. Confidential Business Information

Information submitted as a comment concerning this supplemental notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

B. 30–Day Comment Period

EPA is allowing a 30 day–comment period because it has determined that such a period will provide the public with an adequate opportunity to respond to the additional issues raise in this supplemental notice. FFDCA and FIFRA do not specify a comment period for this type of notice. EPA has decided that a 30–day comment period is reasonable because this supplemental notice raises very few new issues that were not already available for public comment. As discussed in Unit IV. of this supplemental notice, EPA effectively considered most of the factors required by the FQPA amendments of FFDCA and FIFRA relevant to the proposed exemptions when it issued the proposed package of notices describing EPA's approach in 1994 (59 FR 60496, 60519, 60535, 60542 and 60545). At that time, the public had an opportunity to review both the Agency's rationale for the proposals and the underlying support documents during a 90–day public comment

period. Only a limited number of new issues have been raised by the FQPA amendments to FFDCA and FIFRA and the Agency continues to rely upon the information already in the docket for the 1994 proposals and thus 30 days should provide adequate time for public comment. In addition, EPA believes that it is in the interest of the public to publish the final exemption from the requirement of a tolerance in a timely manner.

C. Request for Comments

Interested persons are invited to submit written comments on the new issues raised in this supplemental notice specifically on:

(1) EPA's conclusion that there are no substances outside of the food supply that may have a cumulative toxic effect with residues of viral coat proteins produced in plants as part of a plant-pesticide.

(2) EPA's conclusion that there are no substances outside of the food supply that are related via a common mechanism of toxicity to residues of viral coat proteins produced in plants as part of a plant-pesticide to which humans might be exposed through non-occupational routes of exposure.

Commenters who possess information on viral coat proteins causing estrogenic effects are requested to send such information to EPA.

In this supplemental notice, EPA describes in greater detail the rationale supporting the statement made in the 1994 **Federal Register** (59 FR at 60513) that ''plant-pesticides are likely to present a limited exposure of pesticidal substances to humans. In most cases, the predominant, if not the only route of exposure will be dietary. Significant respiratory and dermal exposures will be unlikely.'' No comments were received on this statement during the official comment period. Commenters may comment on this more detailed rationale for viral coat proteins.

In this supplemental notice, EPA also describes in greater detail how the rationale presented in the 1994 **Federal Register** (59 FR at 60538) concerning the safety for human consumption of food containing viral coat proteins applies to infants and children. No comments were received on this rationale during the official comment period. Commenters may comment on this more detailed rationale specifically addressing infants and children as part of the larger human population.

VI. Public Docket

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number ''OPP–300367A'' 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 address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''OPP–300367A.'' Electronic comments on this supplemental notice may be filed online at many Federal Depository Libraries.

VII. References

(1) Gibbs, A. and B Harrison. 1976. *Plant Virology: The Principles*, Chap. 1. J. Wiley Sons, New York.

(2) Matthews, R.E.F. 1981. *Plant Virology*. Chaps. 12, 16, and 19. Second edition, Academic Press, New York.

(3) Provvidenti, R., R.W. Robinson, and H.M. Munger. 1984. Occurrence of Zucchini Yellow Mosaic Virus in Curcubits from Connecticutt, New York, Florida and California, *Plant Disease* 68:443-446.

(4) Beemster, A.B.R. and J.A. de Bokx. 1987. Survey of Properties and Symptoms of Potato Viruses, pp. 84-93 In: *Viruses of Potatoes and Seed Potato Production*; J.A. de Bokx and J.P.H. vanderWant. PuDOC, Wageningen, The Netherlands.

(5) Brun, G. 1991. Rhabdoviridae, Chap. 17, pp. 443-460; In: *Atlas of Invertebrate Viruses*, eds. J.R. Adams and J.R. Bonami. CRC Press, Boca Raton, FL.

VIII. Regulatory Assessment Requirements

This supplemental notice merely seeks additional comments on the proposed rules with regard to the potential impact that the new statutory amendments imposed by the August 3, 1996 Food Quality Protection Act (FQPA) might have on the provisions as proposed. As such, this notice does not contain any new proposed requirements that would require additional consideration by the Office of Management and Budget (OMB) under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993) or the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*. It does not require any other action under Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*.). The Agency's activities related to these regulatory assessment requirements are discussed in the proposed rules.

EPA did not consider Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) at the proposal stage because the proposed rules were issued prior to its enactment. Although this supplemental notice is not subject to UMRA because it neither proposes or finalizes any regulatory requirements, the applicability of the UMRA requirements will be addressed in the final rules.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Plants, Plant-pesticides, Reporting and recordkeeping requirements

Dated: May 7, 1997.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97–12785 Filed 5–15–97; 8:45 am]

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Part VII

Environmental Protection Agency

40 CFR Parts 51 and 52

Prevention of Significant Deterioration of Air Quality (PSD) Program: Permit Review Procedures for Sources That May Adversely Affect Air Quality in Non-Federal Class I Areas; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[FRL–5826–5]

RIN 2060–AH01

Prevention of Significant Deterioration of Air Quality (PSD) Program: Permit Review Procedures for Sources That May Adversely Affect Air Quality in Non-Federal Class I Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance Notice of Proposed Rulemaking (ANPR).

SUMMARY: Under the Clean Air Act's PSD program, States and Tribes may, with EPA approval, redesignate their lands as ''Class I'' areas to enhance protection of their air quality resources. This notice requests early public input on preliminary issues in clarifying the PSD permit review procedures for new and modified major stationary sources that may have an adverse effect on the air quality of these non-Federal Class I areas. EPA seeks to develop clarifying PSD permit procedures that are effective, efficient and equitable.

DATES: *Comments.* All public comments must be received by August 14, 1997.

Public Workshops. EPA will hold public workshops on this rulemaking. A **Federal Register** notice announcing the dates of these workshops will be published at least 30 days prior to the workshop.

ADDRESSES: *Comments.* Comments on this notice should be mailed (in duplicate if possible) to: U.S. EPA, Air Docket Section, Air Docket A–96–53; 401 M Street, S.W., Washington, D.C. 20460.

Public Workshops. EPA will hold public workshops in Phoenix, Arizona and in Chicago, Illinois. A **Federal Register** notice announcing the dates of these workshops will be published at least 30 days prior to the workshops. Please contact the EPA official listed under **FOR FURTHER INFORMATION CONTACT** if you are interested in participating in the public workshops.

Public Docket. Supporting information for this rulemaking is contained in Docket No. A–96–53. This docket is available for public review and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday at the EPA's Air Docket Section, 401 M Street, S.W., Washington, D.C.; Room M–1500. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: David LaRoche, U.S. EPA, Office of Air and Radiation (6102), 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7652.

SUPPLEMENTARY INFORMATION:

I. Overview

The PSD program authorizes States and Tribes to request redesignation of their lands as ''Class I'' areas. Over the past twenty years, only federally-recognized Tribes have sought redesignation under this authority. EPA has approved Class I redesignations for the Northern Cheyenne Indian Reservation, the Flathead Indian Reservation, the Fort Peck Indian Reservation, and the Spokane Indian Reservation. *See* 40 CFR 52.1382(c) and 52.2497(c). Recently, EPA approved Class I redesignation of the Yavapai-Apache Reservation, located in the State of Arizona. *See* 61 FR 56461 (Nov. 1, 1996) (to be codified at 40 CFR 52.150). EPA has proposed approval of the Forest County Potawatomi Community request for redesignation located in the State of Wisconsin. *See* 60 FR 33779 (June 29, 1995). EPA will provide opportunity for public comment and hold a public hearing before it makes a final decision on this proposed action.

During EPA's review of the Yavapai-Apache and Forest County Potawatomi redesignation requests, nearby States submitted formal objections to EPA. A common concern has been confusion about the PSD permit review procedures that would apply in these States in the event a Class I redesignation request is granted, and what EPA's specific role would be in resolving any intergovernmental disputes that arise over proposed permits for PSD sources that may adversely affect non-federal Class I areas. In response to these concerns, EPA has initiated this rulemaking to clarify the PSD permit review and dispute resolution procedures for proposed new and modified major stationary sources locating near non-Federal Class I areas.

The new procedures established in this rulemaking would apply for any State or Tribal lands redesignated as Class I. Thus, the rulemaking is intended to clarify PSD permit review procedures for proposed PSD sources that may adversely affect the air quality of any State or Tribal non-Federal Class I area, and would set forth more specific procedures for EPA's resolution of any intergovernmental permit disputes which may arise.

The discussion in part II below contains an overview of the PSD program to help provide context and further understanding of the issues presented in this notice. Part III of this notice examines preliminary issues on which EPA seeks early public input. Part IV describes the workshops EPA will hold to facilitate public input.

II. The PSD Program

The central purpose of the PSD program is to protect clean air resources. Thus, the PSD program is an important air pollution prevention program. The genesis of the program was a lawsuit to enjoin EPA's approval of state implementation plans that allowed air quality degradation in areas having air quality better than the national ambient air quality standards. *Sierra Club* v. *Ruckelshaus*, 344 F.Supp. 253 (D.D.C. 1972), *aff'd per curiam*, 4 Env't Rep. Cases 1815 (D.C. Cir. 1972), *aff'd by an equally divided court, sub. nom. Fri* v. *Sierra Club*, 412 U.S. 541 (1973). The court granted the injunction reasoning that the congressionally-declared purpose of the Clean Air Act to ''protect and enhance'' the quality of the nation's air resources embodied a non-degradation policy. *Sierra Club*, 344 F.Supp. at 255–56.

In response to the *Sierra Club* decision EPA adopted a PSD program. *See* 39 FR 42510 (Dec. 5, 1974). The administrative program was superseded by a congressionally-crafted program in the 1977 amendments to the Clean Air Act. Public Law 95–95, 91 Stat. 685. EPA presently has two sets of regulations implementing the 1977 statutory PSD program: (1) 40 CFR 51.166 establishes the requirements for State-administered PSD programs, and (2) 40 CFR 52.21 provides for Federal implementation of PSD requirements in States not having approved programs and for federally-recognized Indian Tribes.[1]

A. PSD Areas

Areas nationwide are ''designated'' based on their air quality status relative to the national ambient air quality standards (NAAQS). The PSD program applies to areas designated ''attainment'' and ''unclassifiable'' under section 107 of the CAA, 42 U.S.C. Sec. 7407; these are areas that meet the NAAQS, or areas that cannot be determined on the basis

[1] The 1990 amendments to the Clean Air Act made relatively minor revisions to the PSD program. Pub. L. 101–549, 104 Stat. 2399. Conforming changes have not been made to the implementing regulations. Also, EPA has proposed rules under section 301(d) of the Clean Air Act that would treat Federally-recognized Indian Tribes in the same manner as States for purposes of numerous Clean Air Act programs including the PSD program. 59 FR 43 956 (Aug. 25, 1994). Depending on their final form, these rules may allow Tribes to administer Federally-approved PSD permit review programs in the same way that States do.

of available information as meeting or not meeting the NAAQS.

PSD areas are further categorized as Class I, II or III. The classification of an area determines the maximum increase in pollutant concentrations, or ''increment'' of air quality deterioration, allowed over a baseline air quality concentration. Class I areas have the smallest increments and therefore allow the least amount of air quality deterioration. Conversely, Class III areas have the largest air quality increments and allow the greatest deterioration. In all instances, the NAAQS are the overarching air pollution concentration ceilings. That is, regardless of the size of the increment, the NAAQS may not be violated in a PSD area.

There are PSD increments for particulate matter, sulfur dioxide and nitrogen dioxide. EPA's PSD regulations establish the incremental amount of air quality deterioration allowed for these pollutants in Class I, II and III areas. 40 CFR 51.166(c) and 52.21(c).

When Congress enacted the PSD program in 1977 it provided that specified Federal lands, including certain national parks and wilderness areas, must be designated as Class I areas and may not be redesignated to another classification. Because they may not be redesignated, these Federal areas are called mandatory Class I areas. CAA Secs. 162 and 163, 42 U.S.C. Secs. 7472 and 7473.

The statute also carried forward as Class I areas any areas redesignated as Class I under EPA's pre-1977 regulations. CAA Sec. 162(a). The Northern Cheyenne reservation was the only redesignated Class I area affected by this provision. *See Nance* v. *EPA*, 645 F.2d 701 (9th Cir. 1981), *cert denied, Crow Tribe of Indians* v. *EPA*, 454 U.S. 1081 (1981).

All other PSD areas of the country were designated as Class II areas under the 1977 Clean Air Act amendments. CAA Sec. 162(b). At the same time, States and Tribes were authorized to seek redesignation of their Class II areas as Class I or Class III. CAA Sec. 164, 42 U.S.C. Sec. 7474. As noted, several Tribes have sought a Class I air quality designation. Currently, there are no Class III areas.

B. PSD Sources

The PSD preconstruction review permit program applies to new and modified major stationary sources. Construction, or subsequent operation, of new major stationary sources and major modifications to existing major stationary sources are prohibited unless the source obtains a permit meeting PSD requirements.

Major stationary sources generally include sources that have the potential to emit at least 250 tons of air pollution annually. 40 CFR 51.166(b)(1)(i)(b) and 52.21(b)(1)(i)(b). Major stationary sources also include specific ''listed'' sources that have the potential to emit at least 100 tons per year of air pollution. 40 CFR 51.166(b)(1)(i)(a) and 52.21(b)(1)(i)(a). The listed sources include, among other facilities, coal-fired power plants (with more than 250 million British thermal units per hour heat input), primary zinc and copper smelters, and portland cement plants. Thus, the PSD program applies to relatively large stationary sources.

Major modifications to existing major stationary sources are also subject to the PSD preconstruction review permit program. Major modifications include a physical or operational change at a major stationary source that would result in a significant net emissions increase in any regulated air pollutant. 40 CFR 51.166(b)(2) and 52.21(b)(2).

C. General PSD Preconstruction Review Permit Requirements

In broad overview, the PSD preconstruction review permit program requires the owner or operator of a proposed source to adopt the best available control technology (BACT) and analyze the air quality impacts associated with the source. CAA Sec. 165(a), 42 U.S.C. Sec. 7475(a). BACT is defined in section 169(3) of the CAA, 42 U.S.C. Sec. 7479(3) as an emission limitation based on the maximum degree of pollutant reduction that is achievable taking into account energy, environmental and economic impacts.

The PSD air quality impact assessment involves several considerations. Generally, the owner or operator of the proposed source must demonstrate that it will not contribute to air pollution that violates any NAAQS or PSD increment. CAA Sec. 165(a)(3). The source must also analyze the ambient air quality, climate and meteorology, terrain, soils and vegetation, and visibility at the site and in the area potentially affected by its emission. CAA Sec. 165(e).

D. Special PSD Program Protection for Class I Areas

There are additional, special protections under the PSD program that apply for Class I areas. As examined in more detail below, the statute appears to distinguish between the preconstruction review permit procedures that apply for Federal Class I areas and non-Federal Class I areas. As a necessary prerequisite, the discussion below first explores in more detail the delineation between Federal and non-Federal Class I areas.

1. Federal Class I Areas

a. Mandatory Federal Class I Areas

The Clean Air Act provides two ways for Federal lands to be designated as Class I—either by congressional mandate, or by EPA approval of a State or Tribal request to redesignate Federal lands. Congress specified certain Federal lands as mandatory Class I areas. National parks larger than 6000 acres, national memorial parks and national wilderness areas larger than 5000 acres, and international parks that were in existence on August 7, 1977 are designated by statute as mandatory Class I areas. CAA Sec. 162(a). These areas cannot be redesignated.

b. Other Federal Class I Areas

Congress also authorized States and Tribes to seek redesignation of other Federal public lands within their boundaries as Class I. These are lands currently designated as Class II. To inform such redesignation decisions, Congress directed the Federal Land Managers (FLM) to review all national monuments, primitive areas and national preserves and to recommend the areas having important air quality related values (AQRVs) be redesignated as Class I. CAA Sec. 164(d). The FLM is defined as the Secretary of the Federal Department with authority over the lands.[2] CAA Sec. 302(i), 42 U.S.C. Sec. 7602(i). The recommendations have not resulted in the redesignation of any Federal lands from Class II to Class I. The only Federal Class I areas that presently exist are the original mandatory areas.

2. Non-Federal Class I Areas

Class I areas may also be created if EPA approves a State or Tribal request to redesignate its own lands as Class I. The resulting areas would be non-Federal Class I areas. The PSD permit review procedures that apply to new or modified PSD sources that may adversely affect these non-Federal Class I areas are the central focus of this notice.

As noted in part I, a few Tribes have exercised their discretion to seek heightened air quality protection status under the PSD program by requesting redesignation of lands within reservation boundaries as Class I areas. States may similarly request

[2] The FLM authority has been delegated to other officials within these Departments. For example, the Assistant Secretary for Fish and Wildlife and Parks is the FLM for areas under the jurisdiction of the National Park Service and the U.S. Fish and Wildlife Service.

redesignation of their lands as Class I in accordance with the procedures outlined at 40 CFR 51.166(g) and 52.21(g). Thus, the permit review procedures developed in this rulemaking would apply equally for all non-Federal Class I areas—State or Tribal.

It is important to understand the differences implied by the use of the terms ''Federal'' and ''non-Federal'' areas. The PSD program treats as ''Federal'' lands various national public lands that the Federal government owns and for which it has stewardship responsibility. These public lands include the following: national parks, national memorial parks, national wilderness areas, national monuments, national lakeshores and seashores, national primitive areas, national preserves, national recreation areas, national wild and scenic rivers, national wildlife refuges, and other similar national public lands. *See, e.g.*, CAA Secs. 160(2), 162(a) and 164(a), (d). The term ''non-Federal'' refers to State lands or to lands within the boundaries of an Indian reservation that are not Federal lands within the meaning of the CAA's PSD program. *See, e.g.*, CAA Sec. 164(c). For example, the legislative history distinguishes between the ''Federal lands'' which the Federal government manages as a ''property owner * * * under the stewardship of various Federal agencies'' and tribal lands. Senate Comm. on Environment and Public Works, 95th Cong., 2d Sess., A Legislative History of the Clean Air Act Amendments of 1977 724 (Comm. Print 1978) (statement of Senator Muskie).

In a recent proposal to reform the PSD program, EPA explained that lands within reservation boundaries may or may not be Federal lands within the meaning of the PSD program. In fulfilling its fiduciary responsibility toward federally-recognized Indian Tribes, the Federal government holds some Tribal lands in ''trust'' for the benefit of the Tribe. Such lands may have a federal feature under Federal Indian law but are not ''Federal'' lands within the meaning of the PSD program. However, national public lands within reservation boundaries, such as national monuments, are included within the term ''Federal'' lands. *See* 61 FR 38250, 38293, n. 71 (July 23, 1996). Thus, the PSD permit review procedures for State lands and lands within Indian reservation boundaries that are non-Federal or non-public lands and redesignated as Class I are the subject of this notice.

3. PSD Permit Review Provisions for Federal and Non-Federal Class I Areas

A congressionally-declared purpose of the PSD program is to preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value. CAA Sec. 160(2). To this end, Congress established special PSD permit review procedures that apply to proposed PSD sources whose emissions may adversely impact Federal Class I areas. Based on the statutory text, statutory structure and legislative history it appears that these special permit review procedures, set out at section 165(d) of the CAA, are intended to apply only to Federal lands originally designated, or subsequently redesignated, as Class I areas. The legislative history indicates that these special requirements were intended ''to provide additional protection for air quality in areas where the Federal Government has a special stewardship to protect the natural values of a *national* resource. Such areas are the federally-owned class I areas under the bill.'' S. Rep. No. 127, 95th Cong., 1st Sess. at 34 (1977) (emphasis added).

The central focus of the permit review procedures for Federal Class I areas is to protect the air quality related values (AQRVs) of these areas. The Clean Air Act specifies that AQRVs include visibility. CAA Sec. 165(d). The legislative history further provides that for Federal Class I areas the term AQRVs includes ''the fundamental purposes for which such lands have been established and preserved by the Congress and the responsible Federal agency. For example, under the 1916 Organic Act to establish the National Park Service (16 U.S.C. 1), the purpose of such national park lands 'is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.' '' S. Rep. No. 127, 95th Cong., 1st Sess. 36 (1977).

Specifically, for Federal Class I areas, the statute places an ''affirmative responsibility'' on the FLM to protect the air quality related values of Federal lands. CAA Sec. 165(d)(2)(B).

The FLMs protect AQRVs through a prescribed statutory role. If the proposed source will cause or contribute to a violation of a Class I increment, then the owner or operator must demonstrate to the satisfaction of the FLM that the emissions will not adversely impact AQRVs. If the FLM so certifies, then the permit may be issued. Conversely, even if a proposed source will not cause or contribute to a violation of a Class I increment, the FLM may nevertheless demonstrate to the satisfaction of the permitting authority that the source will have an adverse impact on AQRVs. If so demonstrated, then the permit shall not be issued. CAA Sec. 165(d)(2)(C). Thus, compliance with the Class I increments determines the burden of proof for demonstrating the presence or absence of an adverse impact on AQRVs.

EPA recently proposed significant changes to its PSD and nonattainment New Source Review (NSR) program. The proposal includes revisions to the PSD permit review procedures for sources that may adversely impact Federal Class I areas. *See* 61 FR 38250, 38282–38295 (July 23, 1996). The proposed revisions are intended to improve coordination and cooperation, and clarify relative responsibilities among FLMs, proposed sources, and permitting agencies.

Part III below examines whether EPA's permit review procedures for non-Federal Class I areas should be similar to EPA's recent proposal for Federal Class I areas in all respects or whether some differences must or should exist. While, as noted above, section 165(d) contains specific permit review procedures for Federal Class I areas, the Clean Air Act does not contain such specific provisions for non-Federal Class I areas. However, the CAA does contain provisions aimed at protecting air quality in non-Federal Class I areas when a dispute arises between affected States or Tribes. The Clean Air Act recognizes that a PSD source proposing to locate in one jurisdiction can have adverse effects on the air quality of another jurisdiction. By contrast with the provisions that give the FLM responsibility for protecting Federal Class I areas, any State or Tribal government, concerned that a proposed source outside its jurisdiction may adversely impact the air quality of a non-Federal Class I area, may seek to protect such area. The Clean Air Act establishes a special dispute resolution process to address such intergovernmental disagreements.

The Clean Air Act provides that the Governor of an affected State or the Indian ruling body of an affected Indian Tribe may request the EPA Administrator to enter negotiations with the parties involved to resolve the dispute. If the parties are unable to reach agreement, the Clean Air Act makes EPA the ultimate arbiter of the intergovernmental dispute. Section 164(e) of the CAA establishes the special process for resolving these

intergovernmental disputes, and reads in relevant part as follows:

[I]f a permit is proposed to be issued for any new major emitting facility proposed for construction in any State which the Governor of an affected State or governing body of an affected Indian tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed in this part within the affected State or tribal reservation, the Governor or Indian ruling body may request the Administrator to enter into negotiations with the parties involved to resolve such dispute. If requested by any State or Indian tribe involved, the Administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands involved. If the parties involved do not reach agreement, the Administrator shall resolve the dispute and his determination, or the results of agreements reached through other means, shall become part of the applicable plan and shall be enforceable as part of such plan.

Thus, the broad contours of this provision include (but are not limited to) intergovernmental PSD permit disputes over potential impacts on non-Federal Class I areas.[3] This provision is codified in 40 CFR 52.21(t).

In this rulemaking, EPA endeavors to clarify the PSD permit review procedures in a manner that will facilitate amicable resolution of intergovernmental disputes about potential impacts on non-Federal Class I areas without the need for recourse to EPA. Additionally, EPA will examine the methods EPA should consider and the procedures it should employ in the event it is necessary for EPA to resolve an intergovernmental PSD permit dispute. In resolving any intergovernmental permit disputes EPA will act consistent with its trust responsibilities toward Tribes.

III. Preliminary Issues

The overall objective of the rulemaking revisions addressed in this notice is to clarify and improve the PSD permit review procedures applicable to proposed sources that may adversely affect non-Federal Class I areas.[4] In developing these rules EPA will be guided by the core purposes of the Clean Air Act and the PSD program. As noted, the genesis of the PSD program was the non-degradation policy embodied in section 101(b)(1) to ''protect and enhance'' air quality resources to ''promote the public health and welfare.'' The congressionally declared objectives of the PSD program include ensuring that ''economic growth will occur in a manner consistent with the preservation of existing clean air resources'' and ensuring that ''any decision to permit increased air pollution'' is made ''only after careful evaluation of all the consequences * * * and after adequate procedural opportunities for informed public participation.'' CAA Sec. 160 (3) and (5), 42 U.S.C. 7470 (3) and (5). EPA seeks to develop workable rules that consider preservation of existing clean air resources and potential impacts on economic growth. EPA intends to fashion rules that are clear, sensible and improve the PSD permit process.

EPA seeks public input on the following preliminary issues for use in developing proposed revisions to its PSD permit review procedures at 40 CFR 51.166 and 52.21. EPA's public workshops, discussed in Part IV of this document, will focus on these preliminary issues and other issues raised by members of the public. EPA also encourages public commenters to address the issues in their written submissions to the Agency.

A. Scope of New Rulemaking Initiative

EPA seeks public input on the appropriate scope of this regulatory initiative. Currently, after more than 20 years of authority to redesignate, there are five non-Federal Class I areas. By contrast, there are more than 150 mandatory Federal Class I areas. Thus, non-Federal Class I areas are not nationally prevalent in the same manner as Federal Class I areas.

EPA already has detailed PSD permit review procedures in place. In addition, EPA's recent proposal to reform its PSD rules includes proposed revisions related to permit review procedures for Federal and non-Federal Class I areas. 61 FR 38282–38295. For example, EPA proposed to define the term ''air quality related value'' for both Federal and non-Federal Class I areas as ''a scenic, cultural, physical, biological, ecological, or recreational resource which may be affected by a change in air quality, as defined by the FLM for Federal lands and as defined by a State or Indian Governing Body for non-Federal lands within their respective jurisdictions.'' 61 FR 38283–38284.

EPA has also proposed significance levels for all Class I areas. 61 FR 38291–38292. Under the proposal, PSD sources with a predicted (modeled) air quality impact below the significance levels would be excluded from the requirement to conduct a full Class I increment analysis. EPA indicated that permitting authorities could use the finding of an insignificant impact to determine that the source's emissions would not contribute to an increment violation. However, an impact below the significance level of the PSD increments would not necessarily indicate that the proposed source also has an insignificant impact on AQRVs.

In the pending rulemaking to reform the PSD program, EPA also clarified the PSD requirements applicable to non-Federal lands redesignated as Class I areas. 61 FR 38293–38295. EPA explained that States and Tribes with non-Federal Class I areas may identify AQRVs for their lands and may pursue protection of the AQRVs through the intergovernmental dispute resolution provisions under section 164(e) of the CAA. EPA proposed to adopt a regulation at 40 CFR 51.166(t) to implement section 164(e), as a companion to the regulation currently in place at 40 CFR 52.21(t). 61 FR 38293–38295. EPA also proposed to define ''Federal Class I areas'' to clarify the distinctions between Federal and non-Federal Class I areas. 61 FR 38293–38295.

As noted, section 164(e) provides that a State or Tribe may request intergovernmental dispute resolution if a State or Tribe determines that emissions from a proposed PSD source ''will cause or contribute to a cumulative change in air quality in excess of that allowed in [the PSD program] within the affected State or tribal reservation.'' Section 164(e) further provides that if requested by the State or Tribe involved, EPA shall make a recommendation to resolve the dispute and ''protect the air quality related values of the lands involved.'' If the parties do not reach agreement, EPA shall resolve the dispute and its determination shall become part of the applicable plan. Because section 164(e) specifically provides for protection of AQRVs, EPA has previously explained its view that States and Tribes may seek protection of AQRVs through these intergovernmental dispute resolution provisions. [Letter to George Meyer, Wisconsin Department of Natural Resources, from Valdas Adamkus, EPA

[3] Further, several additional provisions of the Clean Air Act and PSD program are aimed at curbing interjurisdictional air pollution transport. A purpose of the PSD program is to assure that emissions from a source in one jurisdiction do not interfere with PSD in another jurisdiction. CAA Sec. 160(4). State air quality management plans are required to contain provisions that prohibit in-State emissions from interfering with PSD measures in another State. CAA Sec. 110(a)(2)(D). The interstate pollution abatement provisions of the CAA direct State Implementation Plans (SIPs) to require PSD sources to notify nearby States whose air pollution levels may be affected by the source. CAA Sec. 126.

[4] EPA is not proposing to modify its rules on the PSD redesignation process itself. The statute clearly prescribes the process and the implementing regulations (i.e., 40 CFR 51.166(g) and 52.21(g)) provide adequate guidelines.

Regional Administrator for Region V (July 27, 1994).]

In the PSD reform proposal, EPA explained its interpretation of the language authorizing intergovernmental dispute resolution if a proposed source ''will cause or contribute to a cumulative change in air quality in excess of that allowed in [the PSD program].'' EPA stated that a State or Tribe may request intergovernmental dispute resolution when a State or Tribe determines that a proposed source will cause or contribute to a violation of the NAAQS or PSD increment or will harm AQRVs identified by the State or Tribe. 61 FR 38294.

EPA believes its interpretation is supported by the plain language of the statute and statutory structure. The statutory language at issue is expansive—referring generally to ''changes in air quality.'' The increments are a central limit on air quality deterioration established under the PSD program and well within the ambit of this language. At the same time, increments are explicitly referred to elsewhere in the PSD provisions as ''maximum allowable increases'' and ''maximum allowable concentrations'' of pollutants. CAA Secs. 163 & 165(a)(3)(A). Thus, EPA believes that the language in section 164(e)is not confined to PSD increments. The statutory text also appears to encompass adverse impacts on AQRVs due to ''changes in air quality.'' EPA believes AQRVs are properly a basis for initiating dispute resolution since their protection is a stated purpose of the provision. 61 FR 38294. In other words, to allow states or tribes to initiate intergovernmental dispute resolution because of adverse impacts on AQRVs is consistent with the statutory language in section 164(e) that calls for EPA to ''make a recommendation to resolve the dispute and protect the air quality related values of the land involved.'' Today, EPA seeks further public comment on this interpretation.

The proposed revisions to reform the PSD program are the outgrowth of extensive discussions with representatives of State and local governments, regulated industry, Federal Land Managers, and environmental organizations. EPA held a public hearing in September 1996 and has provided abundant opportunity for public comment. Except for interpretation of section 164(e) discussed immediately above, regarding the basis for initiating intergovernmental disputes, EPA does not intend to reopen in this rulemaking the proposals advanced in the separate rulemaking to reform the PSD program published on July 23, 1996 (61 FR 38250).

Thus, the question for this new rulemaking initiative is what additional changes to the PSD permit program are needed to clarify and improve the permit review procedures for proposed sources that may adversely affect air quality in non-Federal Class I areas. EPA requests public input on the appropriate scope of this rulemaking, considering the previously proposed revisions to improve the PSD program and the relatively small number of non-Federal Class I areas.

B. Improving Coordination Between Permitting Authorities and States or Tribes With Non-Federal Class I Areas

The July 1996 proposed rules to reform the PSD program contained provisions to address concerns about the PSD permit review procedures for Federal Class I areas. 61 FR 38282–38295. The proposal is intended to reduce delays and disputes associated with permitting near Federal Class I areas by facilitating coordination between the FLM, the permit applicant and the permit authority, and clarifying the relative roles and responsibilities of the involved parties. A central goal of improved coordination is to help identify potential disagreements early in the permit process, when it is less disruptive. Roles are clarified to ensure that responsibilities are reasonably, and mutually, allocated.

EPA seeks public comment on whether some of the basic policy concerns reflected in EPA's recent proposal to revise the PSD rules for Federal Class I areas are also concerns that should be addressed when developing proposed programmatic improvements for non-Federal Class I areas. These basic policy concerns, as they apply to non-Federal Class I areas, are outlined below. [5]

1. Permit Application Coordination

A State or Tribe with a non-Federal Class I area will be aware of sources proposing to locate within its jurisdiction and can work with the permitting authority to review and resolve potential impacts on non-Federal Class I areas. However, if the source is located in another jurisdiction, a State or Tribe can only effectively protect its non-Federal Class I area from potentially adverse effects if it knows about the proposed source.

In its July 1996 proposed revisions to the PSD rules, EPA generally proposed to require submittal of permit applications to the FLMs for sources locating within 100 kilometers (km) of a Federal Class I area. EPA also proposed to require basic source information concerning sources locating more than 100 km from a Federal Class I area to be input into an electronic database in lieu of transmitting entire permit applications to the FLMs. The database enables the FLMs to review information about proposed PSD sources and determine whether further information about the project is needed. 61 FR 38287–38288.

EPA's current regulations generally require State-administered PSD programs to send the public notice of PSD permits to any State or Indian Governing Body whose lands may be affected by emissions from the source or modification. 40 CFR 51.166(q)(2)(iv). The public notice includes the following information: indicates that a PSD permit application has been received, states the permitting authority's preliminary determination to approve or deny the permit, describes the degree of increment consumption that is expected, and addresses the opportunity for comment at a public hearing as well as written public comment.

EPA requests public comment on whether EPA should clarify when a permit authority must provide an affected State or Tribe with a copy of the public notice. EPA also requests comment addressing whether, when a non-Federal Class I area may be affected, EPA should also require permit authorities to provide affected States or Tribes with copies of the permit application or other advance notice before the permit authority makes a preliminary determination to grant or deny the permit.

For example, commenters should address whether EPA should establish standard procedures for permit application notification of sources that may adversely affect non-Federal Class I areas, and how such notification could be effectively and efficiently accomplished. Using the distance between the proposed source and non-Federal Class I area as a basis for determining whether coordination is necessary is simplistic and clear. However, rigid distances alone can be over- and under-inclusive. For example, if States or Tribes with non-Federal Class I areas were required to be notified of all proposed sources within 100 km of the Class I area, then this may place a burden on some sources that do not threaten the area and exclude some

[5] As noted, this notice does not seek public comment on EPA's proposed revisions to the permit review procedures for Federal Class I areas published on July 23, 1996 and already subjected to public comment.

large sources that may impact the area. EPA seeks suggestions on how to ensure that States and Tribes with non-Federal Class I areas receive adequate information about proposed sources that may affect the areas without placing undue burdens on PSD permit applicants and permit agencies.

EPA also requests public comment on how to facilitate intergovernmental coordination during the permit review process to avoid the need for EPA to resolve disputes over potential impacts on non-Federal Class I areas. EPA's July 1996 proposal contained several potential revisions to the PSD rules that call for consultation between the permitting authority and FLM at various key stages of the permit process. 61 FR 38283–38295. Intergovernmental consultation may facilitate resolution of concerns. Further, the earlier all parties are aware of potential concerns, then the sooner the concerns can be resolved and constructive discourse can begin. EPA requests public comment addressing consultation and other measures that can be taken to help resolve intergovernmental permit disputes at an early stage in the permit process. Commenters should address whether consultation would be productive, what alternative measures would be appropriate, and what stages in the permit process consultation should be formalized.

2. Identifying and Disseminating Information About Air Quality Related Values

As noted, EPA's July 1996 proposed PSD revisions define ''AQRVs'' for Federal and non-Federal lands as visibility or a scenic, cultural, physical, biological, ecological, or recreational resource that may be affected by a change in air quality, as defined by the Federal Land Manager for Federal lands and as defined by the applicable State or Indian Governing Body for non-Federal lands. 61 FR 38284. EPA's July 1996 notice sought public comment on this proposed definition and EPA is not seeking further comment in today's notice.

However, EPA does request public input on measures to encourage identification and dissemination of information about the AQRVs for non-Federal lands. EPA's July 1996 proposal included provisions for the public dissemination of information about the AQRVs for Federal lands. 61 FR 38283–86. EPA proposed to place responsibility on the FLM to ensure that permit applicants and permit agencies have adequate information about any AQRV which the FLM has identified. Public commenters should address reasonable steps that can be taken by States or Tribes with AQRVs to inform PSD permit agencies and applicants about the AQRVs. Commenters should also suggest the type of information that would be useful to potential permit applicants and permit agencies.

A related issue is the level of technical support that should accompany identification of AQRVs. Technical or scientific information about AQRVs may be necessary for a neighboring permit agency and permit applicant to understand and address potential concerns. EPA requests comments on whether EPA should propose rules addressing the technical support information for AQRVs identified by a State or Tribe, and seeks input on approaches that may be appropriate.

3. No Affirmative Responsibility to Protect AQRVs of Non-Federal Lands

As noted, the Clean Air Act places an affirmative responsibility on FLMs to protect the AQRVs of Federal Class I areas. Thus, the FLM has a special duty under Federal law to protect the air quality related resources of Federal Class I areas.

However, it does not seem appropriate for a State or Tribe with a non-Federal Class I area to be under a similar responsibility to protect AQRVs. This is an area where a departure between Federal and non-Federal lands seems appropriate. Because a decision by a State or Tribe to seek redesignation of its lands as a Class I area is entirely discretionary, EPA believes that it would be inappropriate to place an affirmative responsibility on a State or Tribe to challenge permit applications from proposed sources locating in other jurisdictions. Thus, EPA is disinclined in this rulemaking to place any duty on an affected State or Tribe to invoke the intergovernmental dispute resolution process and intends to leave this entirely within the State's or Tribe's discretion. EPA solicits public comment on this proposed approach.

C. EPA Resolution of Intergovernmental Permit Disputes

When a State or Tribe does elect to invoke the dispute resolution process, section 164(e) of the CAA makes EPA the arbiter of intergovernmental PSD permit disputes. Section 164(e) of the CAA provides that if the Governing Body of an affected Indian Tribe or the Governor of an affected State determines that a proposed PSD source ''will cause or contribute to a cumulative change in air quality in excess of that allowed [under the PSD program],'' the Tribe or State may request EPA to enter into negotiations with the parties involved to resolve the dispute. Then, if requested by a State or Tribe, EPA will make a recommendation to resolve the dispute and protect the AQRV's of the lands involved. If that does not lead to resolution, EPA is ultimately called upon to resolve such disputes regardless of whether the proposed permit is being reviewed under a State, Tribal, or Federally administered program. EPA seeks public input on the issues outlined below related to EPA's resolution of permit disputes about potential air pollution impacts on non-Federal Class I areas.

1. EPA's Discretion to Fashion Reasonable Solutions

EPA has broad discretion in crafting solutions to intergovernmental permit disputes under section 164(e) of the CAA. The key statutory text in section 164(e) provides as follows:

> If requested by any State or Indian tribe involved, the Administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands involved. If the parties involved do not reach agreement, the Administrator shall resolve the dispute and his determination, or the results of agreements reached through other means, shall become part of the applicable plan and shall be enforceable as part of such plan.

Thus, Congress has directed EPA to ''make a recommendation to resolve the dispute and protect the air quality related values of the lands involved.'' If the parties cannot reach agreement, EPA is authorized to ''resolve the dispute.'' The statute does not specify or constrain the measures or methods EPA may employ to resolve the dispute.

EPA's discretion to resolve disputes may mean that EPA draws from a variety of methods in resolving any particular PSD permit dispute. This will enable EPA to tailor a solution to the circumstances and issues presented. For example, in the event that EPA is requested to resolve a dispute involving a proposed source's potential impacts on AQRVs and the affected governments disagree about the nature of the projected effects, EPA may need to explore and resolve underlying technical and scientific issues. EPA seeks comment on whether it should elaborate how it might evaluate such technical or scientific disagreements.

Post-construction monitoring may be an effective way to resolve some disputes conditionally. Where there are irreconcilable disputes over the potential impact of a proposed source, post-construction monitoring and subsequent evaluation provides a means

to ascertain actual source impacts and assess the need for any further action.

EPA also requests comment on whether it should address measures that could be employed to mitigate effects on AQRVs. In the July 1996 PSD rulemaking proposal, EPA explored methods to mitigate adverse impacts on the AQRVs of Federal Class I areas to allow permitting of sources that would otherwise face permit modification or denial. 61 FR 38290–38291. Similarly, if resolution of an intergovernmental permit dispute necessitated permit modification or denial to protect the AQRVs of non-Federal Class I areas, mitigation of source impacts through emissions offsets from other sources or other mitigation techniques may present a means to avoid harsher results.

It is also possible that a proposed source may not adversely impact AQRVs but still exceed Class I increments. If that is the case, EPA may consider whether, in certain circumstances and consistent with its trust responsibilities toward tribes, it is within EPA's discretion under section 164(e) to allow issuance of a permit that exceeds Class I increments. It is unclear whether section 164(e) would authorize such action by EPA. This issue is examined in more detail below.

As noted, the Class I increments are the most stringent PSD increments. Therefore, it is conceivable that a proposed source could exceed a Class I increment and yet not adversely impact AQRVs. The Clean Air Act expressly recognizes this situation for **Federal** Class I areas. As noted, under the specific statutory provisions for Federal Class I areas at section 165(d)(2) of the CAA, a source's contribution to the Class I increments determines who bears the burden of proof for demonstrating the presence or absence of an adverse impact on AQRVs and is not decisive of whether a permit may be issued. If a proposed source will contribute to a Class I increment violation in a Federal Class I area, then the owner or operator may nevertheless demonstrate to the satisfaction of the FLM that the source will not adversely impact AQRVs. Therefore, the FLM may conclude that AQRVs are not threatened despite the Class I increment violation. If the FLM certifies that no adverse impact will occur despite the source's violation of the Class I increment, the permitting authority may issue a PSD permit provided the source demonstrates compliance with the Class II increments (as well as a more stringent three-hour sulfur dioxide concentration level).[6] CAA Sec. 165(d)(2)(C)(iv), 40 CFR 51.166(p)(4) and 52.21(p)(5). Thus, in limited circumstances for Federal Class I areas, the Clean Air Act contemplates that a PSD permit could be issued for a source that exceeds the Class I increments.

However, section 164(e) does not contain a similar express exemption of the Class I increments for non-Federal lands. Further, other provisions of the Clean Air Act specify that a proposed source must comply with increments to qualify for a PSD permit. For example, as underscored, section 163 establishes the Class I increments providing that ''the maximum allowable increase in concentrations of sulfur dioxide and particulate matter *shall not exceed*'' certain prescribed amounts. *See also* 40 CFR 51.166(c) and 52.21(c). Further, section 165(a) directs PSD sources to demonstrate that emissions will not contribute to an increment exceedance more than one time per year. Thus, the absence of an explicit statutory exemption to the Class I increments for non-Federal Class I areas would suggest that section 164(e) should not be construed to provide one.

Additionally, for non-Federal Class I areas, the Class I increments appear to have relevance independent of AQRVs. The intergovernmental dispute resolution provisions for non-Federal lands provide that a State or Tribe may object to a proposed PSD permit if it determines that emissions ''will cause or contribute to a cumulative change in air quality in excess of that allowed [under Part C of the Act—the PSD program] within the affected State or tribal reservation.'' CAA Sec. 164(e). As noted, EPA has previously proposed to interpret excess air quality changes to include a proposed source's contribution to a NAAQS violation, PSD increment violation or AQRV impact. 61 FR 38294. Thus, EPA interprets this provision to direct EPA mediation, at the request of a State or Tribe, when a State or Tribe determines that a proposed source will cause or contribute to a violation of a NAAQS or increment, or contribute to AQRV impacts. The bases for invoking the PSD intergovernmental dispute provisions arguably suggest that Class I increments should be among the concerns protected in resolving disputes.

Further, for non-Federal Class I areas, there are additional reasons to give the Class I increments consideration independent of AQRVs. Because Congress gave States and Tribes broad latitude to seek redesignation of non-Federal lands as Class I areas, States and Tribes could seek redesignation to prevent incremental air quality deterioration without regard to protection of AQRVs. In such a situation, compliance with Class I increments enables States and Tribes to advance public health and welfare concerns associated with air quality degradation independent of AQRVs. Thus, EPA may be requested to resolve a dispute involving only a PSD increment, where no AQRV has been defined. In that case, it could be argued that EPA should never waive a PSD increment in a non-Federal Class I area because the State's or Tribe's goal in redesignating the area to Class I may have been solely the protection of the increments.

At the same time, the section 164(e) dispute resolution provisions direct EPA to ''make a recommendation to resolve the dispute and protect the air quality related values of the lands involved.'' This might suggest that AQRVs, not increments, are the principal focus of protection under section 164(e). But, relying on the objective of protecting AQRVs in section 164(e) as a basis for a Class I increment exemption could be very broad since this explanation could conceivably justify an exemption of the Class II or III increments. Perhaps in exercising its administrative discretion under section 164(e) EPA would be confined to a Class I increment exemption, by direct analogy to the statutory exemption provisions for Federal Class I areas.

EPA requests comment on whether EPA should explore in this rulemaking EPA's discretion to waive the Class I increments for non-Federal Class I areas in resolving permit disputes under section 164(e) of the CAA. While it is clear that such action is impermissible unless AQRVs will also be protected, there may nevertheless be circumstances when Class I increment violations occur that do not threaten AQRVs. EPA also seeks comment on the circumstances under which it might be appropriate for EPA to consider providing an exemption for a Class I

[6] The source must demonstrate compliance with a concentration level for sulfur dioxide measured over three hours that is more stringent than the Class II increment but less stringent than the Class I increment. CAA Sec. 165(d)(2)(C)(iv), 40 CFR 51.166(p)(4) and 52.21(p)(5). If the FLM declines to certify that no adverse impact will occur, the permit must be denied or modified. If the proposed source may not be constructed because of the sulfur dioxide increment for periods of twenty-four hours or less, the Governor may grant a variance of the increment if doing so will not adversely affect AQRVs and the FLM concurs. If the Governor and FLM do not agree, their respective recommendations may be transmitted to the President who may grant the variance if it is in the national interest and the facility meets specific limits on its sulfur dioxide concentrations. CAA Sec. 165(d)(2)(D), 40 CFR 51.166 (p)(5) through (p)(7) & 52.21 (p)(6) through (p)(8).

increment. EPA also requests comment on how to weigh competing concerns in determining whether a Class I increment exclusion may be appropriate. For example, if a State or Tribe with a Class I area was very concerned about increases in direct particulate matter pollution, perhaps it would be appropriate for EPA to consider an exclusion from the short-term sulfur dioxide increment but not from PM–10.

In sum, EPA requests public comment on whether EPA should address in this rulemaking some of the potential measures and tools that may be employed to resolve intergovernmental disputes and, if so, what approaches may be appropriate. Alternatively, it may be appropriate for EPA to adopt very general rules that enable EPA to take any number of actions depending upon the circumstances.

2. Dispute Resolution Procedures

EPA also seeks input on whether and to what extent EPA should prescribe the procedures to be followed in resolving intergovernmental permit disputes under section 164(e). For example, EPA is interested in the public's views about whether EPA should establish a particular dispute resolution process. Further, EPA requests comment on whether EPA should address how the dispute resolution process relates to the permit proceeding and how the resulting solution is implemented.

3. Incentives for Amicable Dispute Resolution

Ideally, intergovernmental permit disputes could be amicably resolved without recourse to EPA. EPA seeks public comment on incentives EPA could create for governments to resolve their concerns amicably.

D. Miscellaneous Changes

EPA also seeks public input on any clarifying, administrative changes EPA should make to its existing PSD regulations in light of the distinctions between Federal and non-Federal Class I areas. Comments regarding consistent use of terminology would be appropriate. For example, the existing rules may generally refer to Class I areas where the context implies that Federal Class I areas is the intended meaning. Technical revisions may help avoid any confusion.

The public should also comment on whether EPA should make any conforming regulatory changes to the Guideline on Air Quality Modeling to clarify and improve the PSD permit procedures for non-Federal Class I areas. The Guideline prescribes the air quality models employed to estimate the air quality impacts of proposed PSD sources and is codified at 40 CFR part 51, Appendix W.

E. Summary of the Principal Issues

To facilitate public input, EPA has summarized the issues raised for comment in this notice.

1. Scope of Rulemaking. What regulatory changes should EPA consider in this rulemaking beyond the PSD programmatic revisions proposed in EPA's July 23, 1996 **Federal Register** notice (61 FR 38250)?

2. Analogy to Federal Class I Area Issues. To what extent should EPA draw from the PSD permit review procedures proposed for Federal Class I areas in the July 23, 1996 notice in considering rule changes for non-Federal Class I?

3. Permit Application Notification. What effective, and efficient, measures should EPA consider to ensure that States and Tribes with non-Federal Class I areas receive adequate information about proposed sources that may adversely impact such areas?

4. Intergovernmental Coordination. How can EPA facilitate intergovernmental consultation and coordination during the permit review process in a manner that helps avoid intergovernmental disputes?

5. Identifying AQRVs. What guidance, if any, should EPA provide about the technical support that should accompany identification of AQRVs by States and Tribes?

6. Disseminating Information about AQRVs. What methods should EPA consider to ensure that States and Tribes with AQRVs provide adequate, timely information about their AQRVs to permit applicants and permit agencies?

7. Responsibility to protect AQRV. Should non-Federal land managers have the same affirmative responsibility as Federal land managers to protect AQRVs?

8. EPA Resolution of Intergovernmental Disputes. Should EPA specify the procedures, measures and techniques that might be employed in resolving intergovernmental permit disputes under section 164(e) and, if so, which of these might be appropriate?

9. Waiver of Class I Increments. Should EPA explore in this rulemaking EPA's discretion to waive the Class I increments for non-Federal Class I areas in resolving permit disputes?

10. Dispute Resolution Procedures. What rules, if any, should EPA consider to govern the manner in which EPA will conduct resolution of intergovernmental permit disputes under section 164(e)?

11. Incentive for Amicable Intergovernmental Dispute Resolution. How can EPA create incentives for amicable resolution of intergovernmental permit disputes?

12. Additional Clarifying Regulatory Changes. What regulatory revisions are necessary to clarify the distinction between Federal and non-Federal Class I areas?

13. Regulatory Flexibility Act. What steps can EPA take in this rulemaking to facilitate public participation by any small entities that may be adversely affected and to mitigate any such impacts?

14. Paperwork Reduction Act. What steps can EPA take in this rulemaking initiative to ensure that any informational requirements are necessary and of practical utility, and to minimize the burden of any information requirements?

IV. Public Workshops

EPA recognizes the complexities of the issues surrounding the PSD permit application process. EPA seeks input from all interested members of the public in formulating a reasonable, workable approach to the PSD permit review procedures for sources potentially impacting non-Federal Class I areas.

The preceding discussion has attempted to identify some major issues in developing an approach to this rulemaking. However, these are only preliminary ideas that do not necessarily exhaust all possible issues and approaches regarding the PSD permit review process. EPA wishes to engage in a public discussion about the PSD permit review process and intends to hold public workshops that will provide opportunity for interested members of the public to address the issues raised in this notice and suggest additional approaches.

The first of these public workshops will be held in Phoenix, Arizona and in Chicago, Illinois. A **Federal Register** notice announcing specific dates, times, and locations of these workshops will be published at least 30 days prior to the workshops. If there is public interest, additional public workshops will be announced in the **Federal Register**.

V. Additional Information

A. Public Docket

This rulemaking action involves promulgation or revision of PSD regulations. Thus, the rulemaking is subject to the procedures in section 307(d) of the CAA, 42 U.S.C. Sec. 7607(d), in accordance with section 307(d)(1)(J). The public docket for this rulemaking action is A–96–53. The docket is a file of information relied on by EPA in the development of

regulations. All written comments and accompanying materials received in response to this notice will be placed in the public docket. The docket is available for public review and copying at EPA's Air Docket, as indicated in the **ADDRESSES** section at the beginning of this document.

B. Executive Order (EO) 12866

Section 3(f) of EO 12866 defines ''significant regulatory action'' for purposes of centralized regulatory review by the Office of Management and Budget (OMB) to mean any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

A draft of this ANPR and associated materials were reviewed by OMB prior to publication. Information related to OMB's review of this ANPR has been placed in the public docket referenced at the beginning of this notice, including: (1) Materials provided to OMB in conjunction with OMB's review of this ANPR; and (2) Materials that identify substantive changes made between the submittal of a draft ANPR to OMB and this notice, and that identify the changes that were made at the suggestion or recommendation of OMB.

C. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

Under the RFA, 5 U.S.C. 601–612, EPA must prepare an initial Regulatory Flexibility Analyses to accompany notices of proposed rulemaking that assess the impact of proposed rules on small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000. However, the requirement of preparing such analyses is inapplicable if the Administrator certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

The regulatory revisions that are being considered in this rulemaking initiative would affect the PSD permit review procedures for new major stationary sources and major modifications to existing major stationary sources. This regulatory initiative is also intended to clarify and improve the existing rules. It is unclear at this stage of the rulemaking process whether this rulemaking initiative may have a significant adverse impact on a substantial number of small entities. Nevertheless, EPA seeks public comment on steps EPA can take in this rulemaking to facilitate public participation by any small entities that may be adversely affected and to mitigate any such impacts.

D. Paperwork Reduction Act

EPA requests public comments on steps EPA can take in this rulemaking initiative to ensure that any informational requirements are necessary and of practical utility, and to minimize the burden of any information requirements.

Dated: May 8, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 97–12918 Filed 5–15–97; 8:45 am]

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Federal Register

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/nara/fedreg/fedreg.html.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 1001/P.L. 105–13

To extend the term of appointment of certain members of the Prospective Payment Assessment Commission and the Physician Payment Review Commission. (May 14, 1997; 111 Stat. 31)

S. 305/P.L. 105–14

To authorize the President to award a gold medal on behalf of the Congress to Francis Albert ''Frank'' Sinatra in recognition of his outstanding and enduring contributions through his entertainment career and humanitarian activities, and for other purposes. (May 14, 1997; 111 Stat. 32)

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FEDERAL REGISTER WORKSHOP

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WHEN: June 17, 1997 at 9:00 am

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