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The President

Hong Kong Economic and Trade Offices

By the authority vested in me as President by the Constitution and the laws of the United States of America, including S. 342, an Act to extend certain privileges, exemptions, and immunities to Hong Kong Economic and Trade Offices, which I signed into law on June 27, 1997, I hereby extend to the Hong Kong Economic and Trade Offices the privileges, exemptions, and immunities provided by the International Organizations Immunities Act (22 U.S.C. 288 *et seq.*), and Article I of the Agreement on State and Local Taxation of Foreign Employees of Public International Organizations (T.I.A.S. 12135). This order is not intended to abridge in any respect privileges, exemptions, or immunities that the Hong Kong Economic and Trade Offices may have acquired or may acquire by international agreements or by congressional action.



THE WHITE HOUSE,
June 30, 1997.

Rules and Regulations

Federal Register

Vol. 62, No. 127

Wednesday, July 2, 1997

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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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 455

Macadamia Nut Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Macadamia Nut Crop Insurance Regulations by extending the insurance period for the 1997 crop year only. The intended effect of this interim final rule is to realign the macadamia nut crop insurance period to conform with the macadamia nut production period.

DATES: This rule is effective July 2, 1997.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131.

FOR FURTHER INFORMATION CONTACT: Stephen Hoy, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Under the current Macadamia Nut Crop Insurance Regulations, a producer must submit a new application each

year for which insurance is requested. No application will be required to extend the 1997 crop year insurance coverage. Therefore, the amendments set forth in this rule do not contain additional information collections that require clearance by OMB under the provisions of 44 U.S.C. chapter 35.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

OMB is required to make a decision concerning the collections of information contained in these regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the interim final rule.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pubic Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility

Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

This interim final rule amends the Macadamia Nut Crop Insurance Regulations (7 CFR part 455) to extend insurance coverage for the 1997 crop year. The extended insurance coverage period for the 1997 crop year will begin on January 1, 1998, and the calendar date for the end of the insurance period will be June 30, 1998.

The current Macadamia Nut Crop Insurance Regulations provide crop insurance coverage from January 1, 1997, through December 31, 1997, for the 1997 crop year. The 1998 macadamia nut industry production year extends from July 1, 1997, to June 30, 1998. The difference between the crop insurance period and production

year is not conducive to maintaining actual production history (APH) records or establishing effective loss adjustment procedures.

FCIC has published new macadamia nut crop insurance provisions that will attach to the Common Crop Insurance Policy Basic Provisions for the 1999 and succeeding crop years. These changes will result in the 1998 crop year being incorporated into the 1997 and 1999 policies. Insurance coverage under the new macadamia nut crop provisions will attach on January 1, 1998, and the end of the insurance period will be June 30, 1999, for the 1999 crop year.

Coverage against insured causes of loss will be provided on all macadamia nut blooms and nuts normally produced during the production year that extends from July 1 to June 30 of the next calendar year. From January 1 to June 30 of the first calendar year of each insurance period, coverage against insured causes of loss will only be provided on the macadamia nut blooms and immature macadamia nuts that normally produce mature nuts during the production year that will start July 1. Therefore, an extension of the 1997 crop year is necessary to provide macadamia nut coverage for the latter six months of the production year that began July 1, 1997. Thereafter, each crop insurance period will include a complete production year.

No additional premium or administrative fee will be due for catastrophic risk protection, limited coverage, or additional coverage insurance that is extended for the crop year. A premium and administrative fee has been paid for the 1997 crop year, and there will be no 1998 crop year. Therefore, good cause exists to make this rule effective upon publication without prior notice and the opportunity to comment before the rule is effective.

List of Subjects in 7 CFR Part 455

Crop insurance, Macadamia nuts.

Interim Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR part 455, as follows:

PART 455—MACADAMIA NUT CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 455 is revised to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. In § 455.7(d), in the Macadamia Nut Crop Insurance Policy, revise 7.(e), 8.(b)(4), and 9.(2)(3) to read as follows:

§ 455.7 The application and policy.

* * * * *

Macadamia Nut—Crop Insurance Policy

7. Insurance Period

* * * * *

(e) June 30, 1998, for the 1997 crop year only.

* * * * *

8. Notice of Damage or Loss

* * * * *

(b) * * *

(1) * * *

(2) * * *

(3) * * *

(4) June 30, 1998, for the 1997 crop year only.

* * * * *

9. Claim for Indemnity

(a) * * *

(1) * * *

(2) * * *

(3) June 30, 1998, for the 1997 crop year only.

* * * * *

Signed in Washington, D.C., on June 26, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97-17353 Filed 7-1-97; 8:45 am]

BILLING CODE 3410-08-P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 455 and 457

Macadamia Nut Crop Insurance Regulations; and Common Crop Insurance Regulations, Macadamia Nut Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of macadamia nuts. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current macadamia nut crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current macadamia nut crop insurance regulations to the 1997 and prior crop years.

EFFECTIVE DATES: July 2, 1997.

FOR FURTHER INFORMATION CONTACT: Stephen Hoy, Insurance Management

Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions on information collection requirements previously approved by OMB under OMB control number 0563-0053 through September 30, 1998. No public comments were received.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. The new provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The producer must also annually certify to the previous

years production if adequate records are available to support the certification. The producer must maintain the production records to support the certified information for at least three years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

This final rule has been reviewed in accordance with Executive Order No. 12988. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Friday, April 18, 1997, FCIC published a proposed rule in the **Federal Register** at 62 FR 19063-19067 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.131, Macadamia Nut

Crop Insurance Provisions. The new provisions will be effective for the 1999 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring macadamia nuts found at 7 CFR part 455 (Macadamia Nut Crop Insurance Regulations). FCIC also amends 7 CFR part 455 to limit its effect to the 1997 and prior crop years.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. A total of 14 comments were received from reinsured companies, a crop insurance agent, an insurance service organization, and an FCIC Regional Service Office (RSO). The comments received and FCIC's responses are as follows:

Comment: An insurance service organization and a reinsured company recommended that the word "field" in the last line of the definition of "Direct marketing" be replaced by the word "orchard."

Response: FCIC agrees and has revised the definition accordingly.

Comment: An insurance service organization and a reinsured company expressed concern with the definition of "Good farming practices," which makes reference to "cultural practices generally in use in the county * * * recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county." The commenter questioned whether cultural practices exist that are not necessarily recognized (or possibly known) by the Cooperative State Research, Education, and Extension Service. The commenter also indicated that the term "county" in the definition of "Good farming practices" should be changed to "area."

Response: FCIC believes that the Cooperative State Research, Education, and Extension Service (CSREES) recognizes farming practices that are considered acceptable for producing macadamia nuts. If a producer is following practices currently not recognized as acceptable by the CSREES, there is no reason why such recognition cannot be sought by interested parties. The cultural practices recognized by the CSREES may pertain only to specific areas within a county. Such limitation would be considered by FCIC; therefore, no change has been made. FCIC agrees with the recommendation to change the term "county" to "area" in the definition of "Good farming practice" and has revised the definition accordingly.

Comment: An insurance service organization recommended that the

summary of changes in the proposed rule should have indicated that the definition of "Harvest" in section 1 had been changed from the definition in the insurance service organization's policy which defines "Harvest" as "The removal of the macadamia nuts from the orchard."

Response: The summary of changes in the proposed rule addressed substantive changes between the proposed provisions and the current Macadamia Nut Crop Insurance Policy issued by FCIC. No comparison was made to the insurance service organization's policy.

Comment: Comments received from reinsured companies, a crop insurance agent, an insurance service organization, and an FCIC RSO expressed concern that the provisions for an optional unit in section 2(e) (3) and (4), as proposed, would require each unit to contain at least 80 acres of bearing macadamia trees and be located on non-contiguous land. Optional unit division guidelines currently require at least 80 acres of bearing macadamia trees. Requiring both minimum acreage and non-contiguous land would severely limit the number of units allowed, particularly for growers with large, contiguous orchards. The majority of commenters recommended that the word "and" be replaced with "or" so that the provisions require each optional unit to be at least 80 acres of bearing macadamia trees or be located on non-contiguous land.

Response: FCIC agrees and has revised the requirements accordingly.

Comment: A reinsured company questioned the reason for the "10-day period" to inspect the acreage as specified in section 8(a)(1). The commenter indicated that the period limits their ability to reject an unacceptable orchard. In addition, an insurance service organization recommended that a specific date (by which an application must be received for insurance to attach on January 1) should not be listed. Instead of a date, this section should state "if your application is received less than ten days before the sales closing date."

Response: FCIC believes that the insurance provider must expedite its review of the application and any supporting documentation filed by the producer, determine if a visual inspection of the orchard is necessary, and perform any inspection within the 10-day period. The period of 10 days is believed appropriate to meet the needs of both the producer and the insurance provider. Listing the date by which an application must be received for insurance to attach on January 1 is more specific, avoids possible confusion, and

is consistent with other perennial crop policies. No change has been made to these provisions.

Comment: An insurance service organization stated that section 11(c)(1)(iv) should not allow the insured to defer settlement and wait for a later, generally lower, appraisal, especially on crops that have a short "shelf life."

Response: A later appraisal will only be necessary if the insurance provider agrees that such an appraisal would result in a more accurate determination and if the producer continues to care for the crop. If the producer does not continue to care for the crop, the original appraisal will be used. No change will be made to these provisions.

Comment: An insurance service organization and a reinsured company recommended removal of the requirement for a written agreement to be renewed each year. If no substantive changes occur from one year to the next, allow the written agreement to be continuous.

Response: Written agreements are intended to supplement policy terms or permit insurance in unusual situations that require modification of the otherwise standard insurance provisions. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is not intended that written agreements be so numerous that they would significantly increase administrative costs and cause producer misunderstanding. It is important to minimize written agreement exceptions to assure that the insured is well aware of the specific terms of the policy. Therefore, no change will be made.

In addition to the changes described above, FCIC has made the following editorial changes to the Macadamia Nut Provisions:

1. Section 2(e)—Modified the language to clarify optional unit requirements. For each optional unit, the producer must have provided records of acreage and production by the production reporting date and maintain records of marketed production or measurement of stored production for each crop year. Each optional unit must also meet specific criteria unless otherwise specified by written agreement.

2. Section 3(c)—Added to clarify that the producer's production guarantee will be determined according to the APH regulations unless damage or changes to the orchard or trees require establishment of the yield by another method.

3. Section 3(d)—Added to clarify that instead of reporting the previous year's production, a one year lag period will

occur and the producer will report production from two crop years ago.

4. Section 8(a)—Clarified that the calendar date for the end of the insurance period is the second June 30th after insurance attaches.

5. Section 10(c)—Clarified that the producer must not destroy the damaged crop until after the insurance provider has given written consent to do so.

Good cause is shown to make this rule effective upon publication in the **Federal Register**. This rule improves the macadamia nut insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. The current regulations are not continuous, and actuarial filing date for the 1999 crop year is August 31, 1997. It is, therefore, imperative that these provisions be made final before that date so that the reinsured companies may have sufficient time to implement these changes. Therefore, public interest requires the agency to act immediately to make these provisions available for the 1999 crop year.

List of Subjects in 7 CFR Parts 455 and 457

Crop insurance, Macadamia nuts.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 455 and 457, as follows:

PART 455—MACADAMIA NUT CROP INSURANCE REGULATIONS FOR THE 1988 THROUGH THE 1997 CROP YEARS

1. The authority citation for 7 CFR part 455 is revised to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. The part heading is revised to read as set forth above.

3. The subpart heading "Subpart—Regulations for the 1988 and Succeeding Crop Years" is removed.

4. Section 455.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 455.7 The application and policy.

* * * * *

(d) The application is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Macadamia Nut Crop Insurance Policy for the 1988 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

5. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

6. Section 457.131 is added to read as follows:

§ 457.131 Macadamia nut crop insurance provisions.

The Macadamia Nut Crop Insurance Provisions for the 1999 and succeeding crop years are as follows:

FCIC policies:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Macadamia Nut Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these Crop Provisions, and the Special Provisions; the Special Provisions will control these Crop Provisions and the Basic Provisions; and these Crop Provisions will control the Basic Provisions.

1. Definitions.

Age. The number of complete 12-month periods that have elapsed since the month the trees were set out or were grafted, whichever is later. An age determination will be made for each unit, or portion thereof, as of January 1 of each crop year.

Crop year. A period beginning with the date insurance attaches to the macadamia nut crop and extending through the normal harvest time. The crop year is designated by the calendar year in which the insurance period ends.

Days. Calendar days.

Direct marketing. Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the orchard for the purpose of picking all or a portion of the crop.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the area.

Graft. The uniting of a macadamia shoot to an established macadamia tree rootstock for future production of macadamia nuts.

Harvest. Picking of mature macadamia nuts from the ground.

Interplanted. Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Irrigated practice. A method of producing a crop by which water is artificially applied

during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Non-contiguous. Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or irrigation canal will be considered as contiguous.

Pound. A unit of weight equal to 16 ounces avoirdupois.

Production guarantee (per acre). The number of wet, in-shell pounds determined by multiplying the approved APH yield per acre by the coverage level percentage you elect.

Rootstock. The root and stem portion of a macadamia tree to which a macadamia shoot can be grafted.

Wet in-shell. The weight of the macadamia nuts as they are removed from the orchard with the nut meats in the shells after removal of the husk but prior to being dried.

Written agreement. A written document that alters designated terms of this policy in accordance with section 12.

2. Unit Division.

(a) Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), (basic unit) may be divided into optional units if, for each optional unit, you meet all the conditions of this section.

(b) Basic units may not be divided into optional units on any basis other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you for the units combined.

(d) All units you selected for the crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have provided records by the production reporting date, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) For each crop year, records of marketed production or measurement of stored production from each optional unit must be maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us;

(3) Each optional unit must meet one or more of the following criteria, as applicable, unless otherwise specified by written agreement:

(i) Contain at least 80 acres of bearing macadamia trees; or

(ii) Be located on non-contiguous land.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only one price election for all the macadamia nuts in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each macadamia nut type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) You must report, by the production reporting date designated in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), by type if applicable:

(1) Any damage, removal of trees, change in practices, or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based and the number of affected acres;

(2) The number of bearing trees on insurable and uninsurable acreage;

(3) The age of the trees and the planting pattern; and

(4) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed:

(i) The age of the interplanted crop, and type if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the following: interplanted perennial crop; removal of trees; damage; change in practices and any other circumstance on the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the circumstance.

(c) The yield used to compute your production guarantee will be determined in accordance with Actual Production History (APH) regulations, 7 CFR part 400, subpart G, and applicable policy provisions unless damage or changes to the orchard or trees require establishment of the yield by another method. In the event of such damage or changes, the yield will be based on our appraisal of the potential of the insured acreage for the crop year.

(d) Instead of reporting your macadamia nut production for the previous crop year, as required by section 3 of the Basic Provisions (§ 457.8), there is a one year lag period. Each crop year you must report your production from two crop years ago, e.g., on the 2001

crop year production report, you will provide your 1999 crop year production.

4. Contract Changes.

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is August 31 preceding the cancellation date.

5. Cancellation and Termination Dates.

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are December 31.

6. Insured Crop.

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all macadamia nuts in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are grown on tree varieties that:

(1) Were commercially available when the trees were set out;

(2) Are adapted to the area; and

(3) Are grown on a rootstock that is adapted to the area.

(c) That are grown in an orchard that, if inspected, is considered acceptable by us;

(d) That are grown on trees that have reached at least the fifth growing season after being set out or grafted. However, we may agree in writing to insure acreage that has not reached this age if it has produced at least 200 pounds of (wet, in-shell) macadamia nuts per acre in a previous crop year; and

(e) That are produced from blooms that normally occur during the calendar year in which insurance attaches and that are normally harvested prior to the end of the insurance period.

7. Insurable Acreage.

In lieu of the provisions in section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching to a crop planted with another crop, macadamia nuts interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the requirements contained in your policy.

8. Insurance Period.

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) Coverage begins on January 1 of each crop year, except that for the year of application, if your application is received after December 22 but prior to January 1, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10-day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the orchard.

(2) The calendar date for the end of the insurance period for each crop year is the second June 30th after insurance attaches.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such

acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any insurable acreage of macadamia nuts on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

9. Causes of loss.

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the orchard;

(3) Earthquake;

(4) Volcanic eruption;

(5) Wildlife, unless proper measures to control wildlife have not been taken; or

(6) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to:

(1) Disease or insect infestation, unless adverse weather:

(i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(ii) Causes disease or insect infestation for which no effective control mechanism is available;

(2) Inability to market the macadamia nuts for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

10. Duties in the Event of Damage or Loss.

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the following will apply:

(a) You must notify us within 3 days of the date harvest should have started if the crop will not be harvested.

(b) You must notify us at least 15 days before any production from any unit will be sold by direct marketing. We will conduct an appraisal that will be used to determine your production to count for production that is sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any acceptable records provided by you, will be used to determine your production to count. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count of not less than the

production guarantee per acre if such failure results in our inability to make the required appraisal.

(c) If you intend to claim an indemnity on any unit, you must notify us at least 15 days prior to the beginning of harvest or immediately if damage is discovered during harvest, so that we may inspect the damaged production. You must not destroy the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section and such failure results in our inability to inspect the damaged production, we may consider all such production to be undamaged and include it as production to count.

11. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate, acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for each type, if applicable, by its respective production guarantee;

(2) Multiplying each result in section 11(b)(1) by the respective price election for each type, if applicable;

(3) Totaling the results in section 11(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable, (see section 11(c)) by the respective price election;

(5) Totaling the results in section 11(b)(4);

(6) Subtracting the results in section 11(b)(5) from the results in section 11(b)(3); and

(7) Multiplying the result in section 11(b)(6) by your share.

(c) The total production to count (wet, in-shell pounds) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is sold by direct marketing if you fail to meet the requirements contained in section 10;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production; and

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for

the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested production from the insurable acreage.

12. Written Agreements.

Terms of this policy that are specifically designated for the use of written agreement may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 12(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington D.C., on June 26, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97-17354 Filed 7-1-97; 8:45 am]

BILLING CODE 3410-08-P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 456 and 457

Macadamia Tree Crop Insurance Regulations; and Common Crop Insurance Regulations, Macadamia Tree Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of macadamia trees. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current macadamia tree crop insurance

regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current macadamia tree crop insurance regulations to the 1997 and prior crop years.

EFFECTIVE DATES: July 2, 1997.

FOR FURTHER INFORMATION CONTACT: Stephen Hoy, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions on information collection requirements previously approved by OMB under OMB control number 0563-0053 through September 30, 1998. No public comments were received.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

The Manager, FCIC, certifies that this regulation will not have a significant impact on a substantial number of small entities. The new provisions included in

this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The producer must also annually certify to the previous years production if adequate records are available to support the certification. The producer must maintain the production records to support the certified information for at least three years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

This final rule has been reviewed in accordance with Executive Order No. 12988. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate

unnecessary or duplicative regulations and improve those that remain in force.

Background

On Friday, April 18, 1997, FCIC published a proposed rule in the **Federal Register** at 62 FR 19067-19071 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.130, Macadamia Tree Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring macadamia trees found at 7 CFR part 456 (Macadamia Tree Crop Insurance Regulations). FCIC also amends 7 CFR part 456 to limit its effect to the 1997 and prior crop years.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. A total of 12 comments were received from an insurance service organization, reinsured companies and an FCIC Regional Service Office (RSO). The comments received and FCIC's responses are as follows:

Comment: An insurance service organization recommended that the definition of "Destroyed" be revised to state "Trees damaged to the extent that we determine replacement, including grafts, is required."

Response: FCIC agrees and has revised the definition accordingly.

Comment: An insurance service organization and a reinsured company expressed concern with the definition of "Good farming practices," which makes reference to "cultural practices generally in use in the county * * * recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county." The commenter questioned whether cultural practices exist that are not necessarily recognized (or possibly known) by the Cooperative State Research, Education, and Extension Service. The commenter also indicated that the term "county" in the definition of "Good farming practice" should be changed to "area."

Response: FCIC believes that the Cooperative State Research, Education, and Extension Service (CSREES) recognizes farming practices that are considered acceptable for growing and maintaining macadamia trees. If a producer is following practices currently not recognized as acceptable by the CSREES, there is no reason why such recognition cannot be sought by interested parties. The cultural practices recognized by the CSREES may pertain only to specific areas within a county.

Such limitation would be considered by FCIC; therefore, no change has been made. FCIC agrees with the recommendation to change the term "county" to "area" in the definition of "Good farming practice" and has revised the definition accordingly.

Comment: Comments received from reinsured companies, an insurance service organization, and an FCIC RSO expressed concern that the provisions for an optional unit in section 2(e) (2) and (3), as proposed, would require each unit to contain at least 80 acres of bearing macadamia trees and be located on non-contiguous land. Optional unit division guidelines currently require at least 80 acres of bearing macadamia trees. Requiring both minimum acreage and non-contiguous land would severely limit the number of units allowed, particularly for growers with large, contiguous orchards. The majority of commenters recommended that the word "and" be replaced with "or" so that the provisions require each optional unit to be at least 80 acres of bearing macadamia trees or be located on non-contiguous land.

Response: FCIC agrees and has revised the requirements accordingly.

Comment: An insurance service organization recommends that section 3(a)(3)(iv) be revised to clarify that the month and year of tree replacement are reported the first year of insurance coverage following replacement.

Response: FCIC agrees and has revised this section accordingly.

Comment: A reinsured company questioned the reason for the "10-day period" to inspect the acreage as specified in section 8(a)(1). The commenter indicated that the period limits their ability to reject an unacceptable orchard. In addition, an insurance service organization recommended that a specific date by which an application must be received for insurance to attach on January 1 should not be listed. Instead of a date, this section should state "if your application is received less than ten days before the sales closing date."

Response: FCIC believes that the insurance provider must expedite its review of the application and any supporting documentation filed by the producer, determine if a visual inspection of the orchard is necessary, and perform any inspection within the 10-day period. The period of 10 days is believed appropriate to meet the needs of both the producer and the insurance provider. Listing the date by which an application must be received for insurance to attach on January 1 is more specific, avoids possible confusion, and is consistent with other perennial crop

policies. No change has been made to these provisions.

Comment: An insurance service organization and a reinsured company recommended removal of the requirement for a written agreement to be renewed each year. If no substantive changes occur from one year to the next, allow the written agreement to be continuous.

Response: Written agreements are intended to supplement policy terms or permit insurance in unusual situations that require modification of the otherwise standard insurance provisions. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is not intended that written agreements be so numerous that they would significantly increase administrative costs and cause producer misunderstanding. It is important to minimize written agreement exceptions to assure that the insured is well aware of the specific terms of the policy. Therefore, no change will be made.

In addition to the changes described above, FCIC has made the following editorial change to the Macadamia Tree Provisions:

Section 2(e)—Modified the language to clarify optional unit requirements. For each optional unit, the producer must have provided records of acreage and age of trees for each unit for at least the last crop year. Each optional unit must also meet specific criteria unless otherwise specified by written agreement.

Good cause is shown to make this rule effective upon publication in the **Federal Register**. This rule improves the macadamia tree insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. The current regulations are not continuous, and the actuarial filing date for the 1998 crop year is August 31, 1997. It is, therefore, imperative that these provisions be made final before that date so that the reinsured companies may have sufficient time to implement these changes. Therefore, public interest requires the agency to act immediately to make these provisions available for the 1998 crop year.

List of Subjects in 7 CFR Parts 456 and 457

Crop insurance, Macadamia trees.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 456 and 457, as follows:

PART 456—MACADAMIA TREE CROP INSURANCE REGULATIONS FOR THE 1988 THROUGH 1997 CROP YEARS

1. The authority citation for 7 CFR part 456 is revised to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. The part heading is revised to read as set forth above.

3. The subpart heading "Subpart—Regulations for the 1988 and Succeeding Crop Years" is removed.

4. Section 456.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 456.7 The application and policy.

* * * * *

(d) The application is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Macadamia Tree Crop Insurance Policy for the 1988 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

5. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

6. Section 457.130 is added to read as follows:

§ 457.130 Macadamia tree crop insurance provisions.

The Macadamia Tree Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

DEPARTMENT OF AGRICULTURE

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Reinsured policies: (appropriate title for insurance provider).

Both FCIC and reinsured policies: Macadamia Tree Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these Crop Provisions, and the Special Provisions; the Special Provisions will control these Crop Provisions and the Basic Provisions; and these Crop Provisions will control the Basic Provisions.

1. Definitions

Age. The number of complete 12-month periods that have elapsed since the month the trees were set out or were grafted, whichever is later. Age determination will be made for each unit, or portion thereof, as of January 1 of each crop year.

Crop year. A period beginning with the date insurance attaches to the macadamia tree crop extending through December 31 of the same calendar year. The crop year is designated by the calendar year in which insurance attaches.

Days. Calendar days.

Destroyed. Trees damaged to the extent that we determine replacement, including grafts, is required.

Good farming practices. The cultural practices generally in use in the county for the crop to have normal growth and vigor, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the area.

Graft. The uniting of a macadamia shoot to an established macadamia tree rootstock for future production of macadamia nuts.

Interplanted. Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Irrigated practice. A method by which the normal growth and vigor of the insured trees is maintained by artificially applying adequate quantities of water during the growing season by appropriate systems and at the proper times.

Non-contiguous. Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

Rootstock. The root and stem portion of a macadamia tree to which a macadamia shoot can be grafted.

Written agreement. A written document that alters designated terms of this policy in accordance with section 12.

2. Unit Division

(a) Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), (basic unit) may be divided into optional units if, for each optional unit, you meet all the conditions of this section.

(b) Basic units may not be divided into optional units on any basis other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you for the units combined.

(d) All units you selected for the crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have provided records, which can be independently verified, of acreage and age of trees for each unit for at least the last crop year; and

(2) Each optional unit must meet one or more of the following criteria, as applicable, unless otherwise specified by written agreement:

- (i) Contain at least 80 acres of insurable age macadamia trees; or
- (ii) Be located on non-contiguous land.

3. Insurance Guarantees, Coverage Levels, and Dollar Amounts for Determining Indemnities

(a) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(1) You may select only one dollar amount of insurance for all the macadamia trees in the county in each age group contained in the actuarial table that are insured under this policy. The dollar amount of insurance you choose for each age group must have the same percentage relationship to the maximum dollar amount offered by us for each age group. For example, if you choose 100 percent of the maximum dollar amount of insurance for one age group, you must also choose 100 percent of the maximum dollar amount of insurance for all other age groups.

(2) If the stand is less than 90 percent, based on the original planting pattern, the dollar amount of insurance will be reduced 1 percent for each percent below 90 percent. For example, if the dollar amount of insurance you selected is \$2,000 and the stand is 85 percent of the original stand, the dollar amount of insurance on which any indemnity will be based is \$1,900 (\$2,000 multiplied by 0.95).

(3) You must report, by the sales closing date contained in the Special Provisions, by type if applicable:

(i) Any damage, removal of trees, change in practices, or any other circumstance that may reduce the dollar amount of insurance and the number of affected acres;

(ii) The number of trees on insurable and uninsurable acreage;

(iii) The month and year on which the trees were set out or grafted and the planting pattern;

(iv) For the first year of insurance following replacement, the month and year of replacement if more than 10 percent of the trees on any unit have been replaced in the previous five crop years; and

(v) For the first year of insurance for acreage interplanted with another perennial crop, and any time the planting pattern of such acreage is changed:

(A) The age of the interplanted crop, and type if applicable;

(B) The planting pattern; and

(C) Any other information that we request in order to establish your dollar amount of insurance.

We will reduce the dollar amount of insurance as necessary, based on our estimate of the effect of interplanted perennial crop, removal of trees, damage, change in practices, and any other circumstance that adversely affects the insured crop. If you fail to notify us of any circumstance that may reduce your dollar amount of insurance from previous levels, we will reduce your dollar amount of insurance as necessary at any time we become aware of the circumstance.

(b) The production reporting requirements contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), do not apply to macadamia trees.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8),

the contract change date is August 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are December 31.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all macadamia trees in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are grown for the production of macadamia nuts;

(c) For which the rootstock is adapted to the area;

(d) That are at least one year of age when the insurance period begins; and

(e) That, if the orchard is inspected, is considered acceptable by us.

7. Insurable Acreage

In lieu of the provisions in section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching to a crop planted with another crop, macadamia trees interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the requirements contained in your policy.

8. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) Coverage begins on January 1 of each crop year, except that for the year of application, if your application is received after December 22 but prior to January 1, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10-day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the orchard.

(2) The calendar date for the end of the insurance period for each crop year is December 31.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any insurable acreage of macadamia trees on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

9. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

- (1) Adverse weather conditions;
- (2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the orchard;
- (3) Earthquake;
- (4) Volcanic eruption;
- (5) Wildlife, unless proper measures to control wildlife have not been taken; or
- (6) Failure of irrigation water supply, if caused by an insured cause of loss that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage due to disease or insect infestation, unless adverse weather:

- (1) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or
- (2) Causes disease or insect infestation for which no effective control mechanism is available.

10. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), in case of damage or probable loss, if you intend to claim an indemnity on any unit, you must allow us to inspect all insured acreage before pruning or removing any damaged trees.

11. Settlement of Claim

(a) We will determine your loss on a unit basis.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

- (1) Multiplying the insured acreage by the dollar amount of insurance per acre for each age group;
- (2) Totaling the results in section 11(b)(1);
- (3) Multiplying the total dollar amount of insurance obtained in section 11(b)(2) by the applicable percent of loss, which is determined as follows:

(i) Subtract the coverage level percent you elected from 100 percent;

(ii) Subtract the result obtained in section 11(b)(3)(i) from the actual percent of loss;

(iii) Divide the result in section 11(b)(3)(ii) by the coverage level you elected (For example, if you elected the 75 percent coverage level and your actual percent of loss was 70 percent, the percent of loss specified in section 11(b)(3) would be calculated as follows: $100\% - 75\% = 25\%$;

$70\% - 25\% = 45\%$; $45\% + 75\% = 60\%$.); and

(4) Multiply the result in section 11(b)(3) by your share.

(c) The total amount of loss will include both trees damaged and trees destroyed as follows:

(1) Any orchard with over 80 percent actual damage due to an insured cause of loss will be considered to be 100 percent damaged; and

(2) Any percent of damage by uninsured causes will not be included in the percent of loss.

12. Written Agreements

Terms of this policy that are specifically designated for the use of written agreement may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 12(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and dollar amount of insurance;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington D.C., on June 26, 1997.

Kenneth D. Ackerman,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 97-17355 Filed 7-1-97; 8:45 am]

BILLING CODE 3410-08-P

FEDERAL ELECTION COMMISSION

11 CFR Part 104

[Notice 1997-11]

Recordkeeping and Reporting by Political Committees: Best Efforts

AGENCY: Federal Election Commission.

ACTION: Final Rule: Announcement of effective date.

SUMMARY: On April 30, 1997 (62 FR 23335), the Commission published the text of revised regulations implementing the requirement of the Federal Election Campaign Act (FECA) that treasurers of political committees exercise their best efforts to obtain, maintain and report the complete identification of each contributor whose contributions aggregate more than \$200 per calendar year. The Commission announces that these rules are effective as of July 2, 1997.

DATES: Effective: July 2, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General

Counsel, or Ms. Rosemary C. Smith, Senior Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 219-3690 or toll free (800) 424-9530.

SUPPLEMENTARY INFORMATION: Section 438(d) of title 2, United States Code, requires that any rule or regulation prescribed by the Commission to implement title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days prior to final promulgation. The revisions to 11 CFR 104.7 (b)(1) and (b)(3), which implement 2 U.S.C. 432(i), were transmitted to Congress on April 25, 1997. Thirty legislative days expired in the Senate on June 16, 1997 and in the House of Representatives on June 18, 1997.

Announcement of Effective Date: 11 CFR 104.7 (b)(1) and (b)(3), as published at 62 FR 23335, is effective as of July 2, 1997.

Dated: June 26, 1997.

John Warren McGarry,
Chairman, Federal Election Commission.
[FR Doc. 97-17251 Filed 7-1-97; 8:45 am]

BILLING CODE 6715-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-CE-24-AD; Amendment 39-10058; AD 97-14-01]

RIN 2120-AA64

Airworthiness Directives; Pilatus Britten-Norman Ltd. BN-2A and BN-2A Mk 111 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 75-24-07 R1, which currently requires repetitively inspecting the left-hand (LH) rudder bar assembly for cracks and loose fasteners on certain Pilatus Britten-Norman Ltd. BN-2A and BN-2A Mk 111 series airplanes, and replacing any cracked part. The superseding action requires inspecting the LH rudder bar assembly and determining the wall thickness of the slider tube unit. This action also would require modifying the rudder bar assembly by replacing the LH slider tube with a new strengthened slider tube unit as terminating action for the repetitive inspections currently required by AD 75-24-07 R1. The development of a modification to the rudder bar assembly, which terminates

the repetitive inspections required by AD 75-24-07 R1, prompted this AD. The actions specified by this AD are intended to prevent failure of the pilot's rudder bar assembly, which could result in loss of control of the airplane during landing operations.

DATES: Effective August 18, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 18, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from Pilatus Britten-Norman Ltd., Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone 44-1983 872511; facsimile 44-1983 873246. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96-CE-24-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. S. M. Nagarajan, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426-6932; facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Pilatus Britten-Norman Ltd. BN-2A and BN-2A Mk 111 series airplanes was published in the **Federal Register** on March 3, 1997 (62 FR 9390). The action proposed to require:

(1) Inspecting for cracks in the LH rudder bar assembly using a dye penetrant method, and measuring the thickness of the slider tube to determine the applicability of the proposed action, either .056-inch (17 gauge), or .036-inch (20 gauge),

(2) Repetitively inspecting for cracks until the accumulation of a determined number of landings, then accomplishing Modification NB/M/948 by installing a new, strengthened central pillar/slider tube assembly, part number (P/N) NB-45-A1-2975, and

(3) If cracks are found during any inspection, accomplishing Modification NB/M/948 by installing P/N NB-45-A1-2975.

Accomplishment of the proposed action would be in accordance with Pilatus Britten-Norman Service Bulletin

No. BN-2/SB.111, Issue 1, dated October 25, 1977 or Pilatus Britten-Norman Service Bulletin No. BN-2/SB.56, Issue 2, dated February 13, 1978, whichever is applicable.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

FAA's Aging Aircraft Commuter Class Policy

The actions required by this AD are consistent with the FAA's aging commuter aircraft policy, which briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated. This policy is based on the FAA's determination that reliance on critical repetitive inspections on airplanes utilized in commuter service carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

Compliance Time

The compliance time for this AD is based on number of landings rather than hours time-in-service. The reason for this type of compliance is that the area that is showing fatigue is the pilot's rudder bar assembly and pillar/slider tube unit. This area of the airplane is used during the landing operation; furthermore, the stress and fatigue is greater in this thinner gauged metal slider tube unit upon landing. Therefore, it has been determined to use the number of landings rather than

hours time-in-service as the compliance time for this AD.

For airplanes equipped with the thinner (20 gauge) slider tubes, the AD requires accomplishing the modification upon the total accumulation of 2,500 landings, or within the next 500 landings after the effective date of the action, whichever occurs later; and for airplanes equipped with the thicker (17 gauge) slider tubes, the AD requires accomplishing the modification within the next 500 landings after the effective date of the action or upon the total accumulation of 5,000 landings, whichever occurs later.

(**Note:** If the operators have not recorded the number of landings, the landings can be calculated by multiplying 3 landings per 1 hour time-in-service.)

Cost Impact

The FAA estimates that 109 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 15 workhours per airplane to accomplish this action, and that the average labor rate is approximately \$60 an hour. Parts cost approximately \$560 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be \$159,140 or \$1,460 per airplane. In addition, the cost figures referenced above are based on the presumption that no affected airplane operator has incorporated the inspection-terminating installation. Pilatus Britten-Norman does not know the number of parts distributed to the affected airplane owners/operators. Numerous sets of parts were sent out to the owners/operators of the affected airplanes, but over the years Pilatus Britten-Norman has not retained these records.

The AD's Impact Utilizing the FAA's Aging Commuter Class Aircraft Policy

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. Of the approximately 109 airplanes in the U.S. registry that will be affected by this AD, the FAA has determined that approximately 30 percent are operated in scheduled passenger service by 11 different operators. A significant number of the remaining 70 percent are operating in other forms of air transportation such as air cargo and air taxi.

The average utilization of the fleet for those airplanes in commercial commuter service is approximately 20 to 40 landings per week with approximately 3 landings per 1 hour TIS per week. Based on these figures,

operators of commuter-class airplanes involved in commercial operation will have to accomplish the modification within approximately 3 to 5 calendar months after the AD becomes effective. For private owners, who typically operate their airplanes between 100 to 200 landings per year, this will allow 12 to 25 years before the modification will be mandatory.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing airworthiness directive (AD)

75-24-07 R1, Amendment 39-4571 and by adding a new AD to read as follows:

97-14-01 Pilatus Britten-Norman, Ltd.:
Amendment 39-10058; Docket No. 96-CE-24-AD.

Applicability: BN-2A and BN-2A Mk 111 Series airplanes (all serial numbers), certificated in any category.

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

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent failure of the left-hand (LH) rudder bar assembly, which, if not detected and corrected, could result in loss of control of the airplane during landing operations, accomplish the following:

(a) Within the next 500 landings after the effective date of this AD, inspect the LH rudder bar unit for cracks (using a dye penetrant method), and measure the thickness/gauge of the LH slider tube in accordance with paragraph 1 of the ACTION Inspection section of Pilatus Britten-Norman (PBN) Service Bulletin (SB) No. BN-2/SB.111, Issue 1, dated October 25, 1977, and paragraphs 1 through 3 in the ACTION section of PBN SB No. BN-2/SB.56, Issue 2, dated February 13, 1978.

Note 2: For operators who have not kept records of the landings of the airplane, use 3 landings per 1 hour time-in-service (TIS).

(b) If no cracks are visible, accomplish the following in accordance with paragraph 3a. and 3b. of the ACTION Inspection section of PBN SB No. BN-2/SB.111, dated October 25, 1977:

(1) For airplanes that have slider tubes with 17 gauge metal (.056-inch thick),

(i) Continue to inspect the LH rudder bar assembly for cracks every 500 landings and,

(ii) Upon the total accumulation of 5,000 landings or within the next 500 landings after the effective date of this AD, whichever occurs later, accomplish Modification NB/M/948 by installing a new, strengthened slider tube unit, part number (P/N) NB-45-A1-2975 in accordance with the ACTION Rectification section of PBN SB No. BN-2/SB.111, dated October 25, 1977.

(2) For airplanes that have slider tubes with 20 gauge metal (.036-inch thick),

(i) Continue to inspect the LH rudder bar assembly for cracks every 250 landings and,

(ii) Upon the total accumulation of 2,500 landings or within the next 500 landings after the effective date of this AD, whichever occurs later, accomplish Modification NB/M/

948 by installing a new, strengthened slider tube unit, P/N NB-45-A1-2975 in accordance with the ACTION Rectification section of PBN SB No. BN-2/SB.111, dated October 25, 1977.

(c) If cracks are visible during any inspection required by this AD, prior to further flight, accomplish Modification NB/M/948 in accordance with the ACTION Rectification section of PBN SB No. BN-2/SB.111, dated October 25, 1977.

(d) Accomplishing Modification NB/M/948 using P/N NB-45-A1-2975 at any time prior to the required number of accumulated landings in paragraphs (b)(1)(ii) and (b)(2)(ii) of this AD is a terminating action for the repetitive inspections required by this AD.

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

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(g) The inspections and modifications required by this AD shall be done in accordance with Pilatus Britten-Norman Service Bulletin No. BN-2/SB.111, Issue 1, dated October 25, 1977, or Pilatus Britten-Norman Service Bulletin No. BN-2/SB.56, Issue 2, dated February 13, 1978, whichever is applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pilatus Britten-Norman Ltd., Bembridge, Isle of Wight, United Kingdom PO35 5PR. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment supersedes AD 75-24-07 R1, Amendment 39-4571.

(i) This amendment (39-10058) becomes effective on August 18, 1997.

Issued in Kansas City, Missouri, on August 18, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-17098 Filed 7-1-97; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[TD 8722]

RIN 1545-AV33

Guidance Regarding Claims for Certain Income Tax Convention Benefits**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Temporary regulations.

SUMMARY: This document contains temporary regulations relating to eligibility for benefits under income tax treaties for payments to entities. The regulations set forth rules for determining whether U.S. source payments made to entities, including entities that are fiscally transparent in the United States and/or the applicable treaty jurisdiction, are eligible for treaty-reduced tax rates. The regulations affect the determination of tax treaty benefits with respect to U.S. source income of foreign persons. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective July 2, 1997.

These regulations apply to amounts paid on or after January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Elizabeth Karzon, (202) 622-3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

This document contains temporary regulations relating to the Income Tax Regulations (CFR part 1) under section 894 of the Internal Revenue Code (Code).

Explanation of Provisions

These regulations prescribe rules for determining whether U.S. source income paid to an entity is eligible for a reduced rate of U.S. tax under an income tax treaty. The regulations are designed principally to clarify the availability of treaty-reduced tax rates for a payment of U.S. source income to an entity that is treated as fiscally transparent, including a hybrid entity (i.e., an entity that is treated as fiscally transparent in either (but not both) the United States or the jurisdiction of residence of the person that seeks to claim treaty benefits).

The regulations address only the treatment of U.S. source income that is not effectively connected with the conduct of a U.S. trade or business. Treasury and the IRS may issue additional regulations addressing the availability of other tax treaty benefits, such as the application of business profits provisions, with respect to income of fiscally transparent entities.

Under the regulations, payments of U.S. source income to an entity that is treated as fiscally transparent for U.S. federal income tax purposes are eligible for reduced tax rates under a tax treaty between the United States and another jurisdiction (the applicable treaty jurisdiction) if the entity itself is a resident of the applicable treaty jurisdiction, or if, and only to the extent that, the interest holders of the entity are residents of the applicable treaty jurisdiction and the entity is treated as fiscally transparent for purposes of the tax laws of such jurisdiction.

Accordingly, payments of U.S. source income to an entity that is treated as fiscally transparent for U.S. federal income tax purposes but as non-fiscally transparent for purposes of the tax laws of the applicable treaty jurisdiction are not eligible for a treaty-reduced tax rate under the relevant treaty unless the entity itself is a resident of the applicable treaty jurisdiction. Conversely, under the regulations, a payment of U.S. source income to an entity that is treated as non-fiscally transparent for U.S. federal income tax purposes (other than a domestic corporation) is eligible for a reduced tax rate under the relevant treaty if the entity itself is a resident of the applicable treaty jurisdiction or if, and only to the extent that, interest holders of the entity are residents of the applicable treaty jurisdiction and the entity is treated as fiscally transparent for purposes of the tax laws of such jurisdiction.

Under these temporary regulations, an entity is treated as fiscally transparent by a jurisdiction only if the jurisdiction requires interest holders in the entity to take into account separately their respective shares of the various items of income of the entity on a current basis and to determine the character of such items as if such items were realized directly from the source from which realized by the entity (for purposes of the tax laws of the jurisdiction). Accordingly, entities treated as fiscally transparent by a jurisdiction are entities subject in that jurisdiction to rules analogous to the U.S. rules applicable to entities that are treated as partnerships for U.S. federal income tax purposes.

These regulations are consistent with U.S. tax treaty obligations and basic tax treaty principles. The regulations as applied to hybrid entities are based on the principles discussed below. Treasury and the Service will continue to coordinate these issues with U.S. tax treaty partners in order to resolve any difficulty arising from the application of the principles set forth in these regulations.

Problems Arising From Dual Classification

The United States generally applies its tax rules to determine the classification of both domestic and foreign entities. When U.S. and foreign laws differ on classification principles, a hybrid entity may result. If income is paid to a hybrid entity, the entity may be considered as deriving the income under U.S. tax principles (e.g., as an association taxable as a corporation under U.S. tax principles), but its interest holders, rather than the entity, may be considered to derive the income under foreign tax principles (e.g., as an entity equivalent to a U.S. partnership). This dual classification may give rise to inappropriate and unintended results under tax treaties, such as double exemptions or double taxation, unless the tax treaties are interpreted so as to take into account the conflict of laws.

To avoid inappropriate and unintended tax treaty results with respect to payments to hybrid entities, these regulations rely on the basic principle that income tax treaties are designed to relieve double taxation or excessive taxation. This objective is generally achieved with provisions in treaties that limit the tax that a country may impose on income arising from sources within its borders to the extent that the income is derived by a resident of a jurisdiction with which the source country has an income tax treaty in effect (an applicable treaty jurisdiction). However, the agreement by the source country to cede part or all of its taxation rights to the treaty partner is predicated on a mutual understanding that the treaty partner is asserting tax jurisdiction over the income. Stated simply, tax treaties contemplate that income relieved from taxation in the source country will be subject to tax in the treaty country. This principle is central to the interpretation of treaty provisions in determining the extent to which payments received by a hybrid entity are eligible for benefits under tax treaties. Some treaties have specific rules reflecting this principle that are helpful in deciding how the treaties should be applied in such cases. However, the lack of specific rules in a

treaty does not suggest that this principle does not apply under that treaty.

In order to implement this principle, virtually all U.S. income tax treaties limit the eligibility for treaty benefits on the condition that the person deriving the income must be a resident of the applicable treaty country. Typical of this condition, for example, is Article 12 of the U.S.-German treaty, which provides that "Royalties derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State." Sometimes, the term *paid to* is used instead of the term *derived by*. However, those terms are used interchangeably and a different choice of words does not indicate that a different result is intended. Generally, a resident is defined as a person who is liable to tax in the treaty country as a resident of that country. See, for example, Article 4.1 of the U.S.-German tax convention, which provides that "the term 'resident of a Contracting State' means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature * * *."

Limiting eligibility for treaty benefits to residents provides assurance to the source country that, when it limits its taxation rights on income arising from within its borders, it does so with the expectation that the income derived by a resident of the treaty country is subject to tax in the residence country.

Application of Principle to Hybrid Entities Generally

Based on the typical residence provisions of U.S. tax treaties, if income is paid to an entity that is treated as fiscally transparent in the treaty country in which it is organized, the entity itself is not eligible for benefits under the applicable treaty because it is not a resident of the treaty country (i.e., by virtue of not being liable to tax in that country). Whether the entity is a resident of the treaty country is determined under the laws of that country and not under the laws of the source country. This observation is important if the entity is a hybrid (i.e., an entity that is treated as fiscally transparent in one jurisdiction and treated as non-fiscally transparent in another jurisdiction). If the entity, treated as fiscally transparent in the treaty country, is treated as a taxable entity in the source country, the entity is considered by the source country as being liable to tax. However, this determination under the source country tax laws does not render the entity a

resident of the treaty country. In order for the entity to be a resident of the treaty country, it must be liable to tax in that country, as determined under the laws of that country.

Where the entity is not eligible for treaty benefits (for lack of residence in the treaty country), there is a question as to whether the owners of the entity may be eligible for benefits under an applicable income tax treaty. As stated above, the guiding principle is that income is eligible for a rate reduction or an exemption in the source country if "derived by" or "paid to" a resident of that country. Where the entity is treated as fiscally transparent, the question is whether the income can be considered "derived by" or "paid to" the owner of the entity.

If the entity is treated as fiscally transparent by all tax jurisdictions involved (i.e., the source country, the country where the entity is organized, and the country where the owners are resident), it is well established under U.S. income tax treaties that the entity is ignored and a look-through approach is intended, with the result that the entity's owners are treated as the persons who derive the income. This result is consistent with the general principle that eligibility for treaty benefits is conditioned upon the income being subject to tax in the treaty country as the income of a resident of that country. In fact, some treaties clarify this point. For example, Article 4.1(b) of the U.S.-German income tax convention provides, like several other U.S. tax conventions, that "in the case of income derived or paid by a partnership, estate, or trust, this term [resident] applies only to the extent that the income derived by such partnership, estate, or trust is subject to tax in that State [the State other than the source State] as the income of a resident, either in its hands or in the hands of its partners or beneficiaries." Further, even where no provisions are included, the Technical Explanation sometimes explains that the look-through rule applies without the need for a specific provision. See the U.S. Treasury Department's Technical Explanation of U.S.-Japan Income Tax Convention signed March 8, 1971, Article 3 (Fiscal Domicile).

Application of Principle to Reverse Hybrid Entity

If an entity is a "reverse" hybrid entity, meaning that it is treated as a taxable entity under the tax laws of the source country but as a fiscally transparent entity in the applicable treaty country, a conflict arises because, under the source country's tax laws, the entity's owners are not treated as

deriving the income. Yet, under the tax laws of the jurisdiction where the entity's owners are resident, the owners are treated as deriving the income paid to the entity. Thus, the question is whether the source country's laws or the laws of each owner's jurisdiction of residence should govern the determination of who is the person deriving the income for tax treaty purposes. Making that determination under the tax laws of the applicable treaty jurisdiction where the owners are resident leads to results consistent with the principle discussed earlier that the source country cedes its tax jurisdiction to the treaty partner based on the understanding that the treaty partner asserts tax jurisdiction over the income by insuring that it is taxable in the hands of a resident. In this case, the entity's owners are resident in a treaty country that treats them as liable to tax on the items of income paid to the entity. On the other hand, applying the tax laws of the source country would lead to results inconsistent with that principle. In other words, tax benefits would be denied under the applicable treaty (because, under the source country's tax laws, the entity's owners are not treated as deriving the income paid to the entity), even though the income arising in the source country is subject to tax in the hands of persons who are resident in the applicable treaty jurisdiction.

Application of Principle to Regular Hybrid Entity

The same principle applies to a "regular" hybrid entity, i.e., an entity that is treated as fiscally transparent in the source country and as a non-fiscally transparent entity in the applicable treaty jurisdiction. If the entity is organized in a treaty jurisdiction, the applicable treaty with that country generally would treat the entity as a resident. Therefore, under that treaty, the entity should be eligible for treaty benefits as an entity deriving the income as a resident of the treaty jurisdiction. On the other hand, the entity's owners who are resident in that jurisdiction (or in any other jurisdiction that treats the entity as non-fiscally transparent) should not be eligible for treaty benefits under that treaty (or a treaty with the country where they are resident that treats the entity as non-fiscally transparent). This result should occur irrespective of the fact that the source country considers that the taxpayers with respect to the income are the entity's owners and not the entity (by virtue of treating the entity as fiscally transparent under its own tax laws). Again, applying the laws of the

applicable treaty jurisdiction to determine whether the entity or its owners are deriving the income as residents of that country leads to results consistent with the basic principle that the source country cedes its tax jurisdiction over income to the extent the income is subject to tax in the hands of a resident of the applicable treaty country.

Applying the tax laws of the source country to determine the person deriving the income for treaty purposes would not only be inconsistent with the basic principle that income should be treated as derived by the person in the treaty country who is liable to tax on that income, it also potentially leads to tax avoidance under tax conventions, including an inappropriate double exemption. For example, if the entity does not fall within the taxing jurisdiction of the applicable treaty jurisdiction (e.g., because the entity is organized in a third country or as a fiscally transparent entity in the source country), the income could be eligible for a treaty-reduced tax rate in the source country and yet not be subject to tax in the jurisdiction where the owners are resident.

In such a case, the owners may eventually be taxed on the income when the entity makes a distribution of the income derived from the source country. The Treasury and IRS believe that the potential for later taxation should not affect the results under the treaty for two reasons: First, the interposition of a hybrid entity between the income and the owner of the entity allows the taxation event in the treaty jurisdiction to be deferred, perhaps indefinitely; second, the income, when distributed or deemed distributed (for example, pursuant to anti-deferral rules of the treaty jurisdiction), may be transformed. In other words, the income derived by the partner will be treated in the partner's residence country as a distribution (or deemed distribution) of profits from the entity and not as the type of income derived by the entity from the source country. This disparity in treatment may lead to a double exemption if, for example, the dividend distribution is exempt from tax in the country where the entity's owners reside due to double tax relief or a corporate integration regime that grants preferential tax treatment to corporate distributions. Interpreting conventions in a way that allows such a double exemption would not be consistent with the primary goal of treaties to relieve double or excessive taxation. This is especially true where, as is the case here, an alternative interpretation exists

that would produce results consistent with basic tax convention principles.

Certain taxpayers have expressed the view that this analysis of the treatment of payments to hybrid entities under tax treaties is inconsistent with the treatment of so-called hybrid securities that are treated differently under the tax laws of the source country and the relevant treaty jurisdiction (e.g., an instrument that is treated as a debt instrument in the source country but as an equity interest in the relevant treaty jurisdiction). In certain cases, the use of hybrid securities can lead to double exemptions, analogous to the double exemptions possible with respect to "regular" hybrid entities, based on the availability of an exemption from tax in the relevant treaty jurisdiction. Treasury and the IRS recognize that hybrid securities can produce inappropriate and unintended results under income tax treaties. Although the residence concept of tax treaties, which incorporates the basic "subject to tax" principle, generally is satisfied with respect to payments on a hybrid security for the reasons discussed above, Treasury and the IRS are considering whether inappropriate and unintended tax treaty consequences, including both double exemptions and double taxation, can arise with respect to hybrid securities and, if so, what alternative avenues exist for addressing them.

The hybrid entity analysis applies regardless of where the entity is organized and where the owners are resident. One example involves an entity organized in one country and owned by persons residing in a third country. If the third country and the source country treat the entity as fiscally transparent, both the source country and the third country can ignore the entity for purposes of granting treaty benefits under the third country's convention with the source country. In such a case, the entity's owners resident in the third country are treated as deriving the income received by the entity, under both the source country tax laws and the tax laws of the third country. In a three-country situation, there may also be simultaneous application of two treaties to the same flow of income: the treaty with the country where the entity is organized, and the treaty with the country where the entity's owners are resident.

The analysis applicable to fiscally transparent entities does not depend on whether the entity has multiple owners or a single owner. Accordingly, the analysis applies to a wholly-owned entity that is disregarded for federal tax purposes as an entity separate from its owner.

Application of Principle to Entity Organized in Source Country

The same analysis generally applies to entities organized in the source country. If both the source country and the treaty jurisdiction where the entity's owners are resident treat the entity as fiscally transparent, then the entity is ignored and the eligibility for treaty benefits is tested at the owners' level. If the entity, however, is treated as non-fiscally transparent in the treaty jurisdiction, then the income is not treated by the treaty jurisdiction as being derived by the owners. Therefore, the owners are not eligible for benefits under the treaty since they are not deriving the income for purposes of the applicable treaty.

Taxpayers may argue that treaty benefits should be allowed to the owners residing in the treaty country because, viewed from the source country's point of view, the owners are deriving the income from the source country and are resident in the treaty country. While the provisions in current treaties do not explicitly provide for this situation, the situation raises exactly the same issues as in the cases discussed above. For this purpose, it is immaterial that the entity is organized in the country of the owner, in a third country, or in the source country.

The analysis does not apply, however, if the entity is a reverse hybrid organized in the United States because, in such a case, the United States treats the entity as a corporate entity, liable to tax in the United States at the entity level. The right of the United States to tax a domestic corporation is established under the "savings clause" of all U.S. tax treaties which preserves the right of the United States to tax its residents and citizens under its domestic law. Distributions from a domestic corporation that is a reverse hybrid are also subject to U.S. tax in the hands of the foreign owners who are treated as shareholders for U.S. tax purposes.

Beneficial Ownership

The principles relied upon in these temporary regulations are consistent with the proposed withholding tax regulations issued under §§ 1.1441-1(c)(6)(ii)(B) and 1.1441-6(b)(4) regarding claims of treaty-reduced withholding rates for U.S. source payments through foreign entities. The temporary regulations, however, do not utilize the same terminology as the proposed withholding tax regulations.

The proposed withholding tax regulations condition eligibility for treaty-based withholding rates for payments to an entity on a

determination of "beneficial owner" status for the entity or the interest holders of the entity pursuant to the laws of the applicable treaty jurisdiction. Accordingly, under the proposed withholding tax regulations, the term *beneficial owner* functions as a surrogate for the principle that a person is eligible for tax treaty benefits with respect to a payment received by an entity only if the person is a resident with respect to such payment.

The term *beneficial owner* as used in the proposed withholding tax regulations may be confusing because this term has other meaning in the tax treaty context. Accordingly, the temporary regulations do not utilize the term *beneficial owner* in the same manner as the proposed withholding regulations. Rather, they condition eligibility for treaty-reduced tax rates for income paid to an entity on a determination that the income is "treated as derived by a resident" of the applicable treaty jurisdiction. Like the determination of beneficial owner status required in the proposed withholding tax regulations, the determination of whether a payment to an entity is "treated as derived by a resident" is determined under the principles in effect under the laws of the applicable treaty jurisdiction. Treasury and the Service intend to conform the final withholding tax regulations to the temporary regulations.

The temporary regulations reflect the fact that the concept of beneficial ownership is an important separate condition for claiming tax treaty benefits. In order to address difficulties where the recipient acts as a "nominee" or "conduit" for another person or in other situations involving a disconnect between legal and economic ownership, most income tax treaties require that the resident be a beneficial owner of the income. This requirement is entirely separate from the beneficial ownership requirement with respect to U.S. source payments to foreign entities reflected in the proposed withholding tax regulations and the residence requirement with respect to U.S. source payments to all entities reflected in these temporary regulations. As used in tax treaties, the term *beneficial owner* is meant to address "conduit", "nominee" and comparable situations in which the person receives the payment in form (and may even be taxed on that income in the jurisdiction in which it resides), but is nevertheless not treated as beneficially owning the income for purposes of a particular treaty because, under the beneficial owner rules of the source country, the income is deemed to belong to another person who is

determined to have a stronger economic nexus to the income. See, for example, section 7701(l) and §§ 1.7701(l)-1(b) and 1.881-3. Thus, the temporary regulations utilize the term *beneficial owner* in a manner consistent with the treaty approach.

Mutual Agreement

Treasury and IRS intend that the principles of the regulations should be applied in a reciprocal manner by U.S. tax treaty partners. For this reason, the regulations include a special rule that provides that, irrespective of any contrary rules in the regulations, a reduced rate under a tax treaty for a payment of U.S. source income will not be available to the extent that the applicable treaty partner does not grant a reduced rate under the tax treaty to a U.S. resident in similar circumstances, as evidenced by a mutual agreement between the relevant competent authorities or a public notice of the treaty partner. Denial of benefits under this provision would be effective on a prospective basis only.

Effective Date

The temporary regulations apply on a prospective basis only to amounts paid on or after January 1, 1998. Withholding agents should consider the effect of these regulations on their withholding obligations, including the need to obtain a new withholding certificate to confirm claims of treaty benefits for payments made on or after the effective date. Treasury and the IRS recognize that the applicable principles for determining eligibility of reduced treaty rates for income paid to hybrid entities may have been uncertain in the past. Accordingly, the IRS does not intend to challenge any claim of treaty benefits for payments to hybrid entities made before the effective date of these regulations on the basis that the claim was based on principles inconsistent with those upon which these regulations are based.

Special Analyses

It has been determined that these temporary regulations are not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Because of rapidly increasing use of hybrid entities

for cross-border transactions, immediate guidance is needed on rules for determining whether U.S. source payments made to entities, including entities that are fiscally transparent in the United States and/or the applicable treaty jurisdiction, are eligible for treaty-reduced tax rates. Therefore, good cause is found to dispense with the notice requirement of section 553(b) of the Administrative Procedure Act. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. § 1.894-1T is added to read as follows:

§ 1.894-1T Income affected by treaty (temporary).

(a) through (c) [Reserved]. For further guidance, see § 1.894-1(a) through (c).

(d) *Determination of tax on income paid to entities*—(1) *In general.* The tax imposed by sections 871(a), 881(a), 1461, and 4948(a) on a payment received by an entity organized in any country (including the United States) shall be eligible for reduction under the terms of an income tax treaty to which the United States is a party if such payment is treated as derived by a resident of an applicable treaty jurisdiction, such resident is a beneficial owner of the payment, and all other applicable requirements for benefits under the treaty are satisfied. A payment received by an entity is treated as derived by a resident of an applicable treaty jurisdiction only to the extent the payment is subject to tax in the hands of a resident of such jurisdiction. For this purpose, a payment received by an entity that is treated as fiscally transparent by the applicable treaty jurisdiction shall be considered a payment subject to tax in the hands of a resident of the jurisdiction only to the extent that the interest holders in the entity are residents of the jurisdiction. For purposes of the preceding sentence, interest holders shall not include any

direct or indirect interest holders that are themselves treated as fiscally transparent entities by the applicable treaty jurisdiction. A payment received by an entity that is not treated as fiscally transparent by the applicable treaty jurisdiction shall be considered a payment subject to tax in the hands of a resident of such jurisdiction only if the entity is itself a resident of that jurisdiction.

(2) *Application of beneficial ownership requirement in respect of certain payments received by entities—*
(i) *Entities treated as fiscally transparent for U.S. tax purposes.* An entity that is treated as fiscally transparent under the laws of the United States and that is resident in an applicable treaty jurisdiction shall be treated as the beneficial owner of a payment if the entity would be treated as the beneficial owner if it were treated as nonfiscally transparent by the United States.

(ii) *Entity's owners as beneficial owners—*(A) A resident of an applicable treaty jurisdiction that derives a payment received by an entity that is fiscally transparent under the laws of the applicable tax jurisdiction shall be treated as the beneficial owner of the payment unless—

(1) Such resident would not have been treated as the beneficial owner of the payment had such payment been received directly by the resident; or

(2) The entity receiving the payment is not treated as a beneficial owner of the payment.

(B) For example, persons residing in treaty Country X and treated under the laws of Country X as interest holders in a fiscally transparent entity created under the laws of Country Y are treated as the beneficial owners of the payments received by the entity from sources within the United States unless the interest holders would not have been treated as beneficial owners had they received the payment directly (e.g., the partners act as nominees or conduits for other persons). However, if the entity itself is acting as a nominee or conduit for another person and, therefore, is not itself a beneficial owner, then none of the interest holders can be treated as beneficial owners, even if the interest holders own their interests in the entity as beneficial owners. For this purpose, the determination of whether a person is a beneficial owner of a payment shall be made under U.S. tax laws.

(3) *Application to certain domestic entities.* Notwithstanding paragraph (d)(1) of this section, an income tax treaty may not apply to reduce the amount of tax on income received by an entity that is treated as a domestic

corporation for U.S. tax purposes. Therefore, neither the domestic corporation nor its shareholders are entitled to the benefits of a reduction of U.S. income tax on income received from U.S. sources by the corporation.

(4) *Definitions—*(i) *Entity.* For purposes of this paragraph (d), the term *entity* shall mean any person that is treated by the United States or the applicable treaty jurisdiction as other than an individual.

(ii) *Fiscally transparent.* For purposes of this paragraph (d), an entity is treated as *fiscally transparent* by a jurisdiction to the extent the jurisdiction requires interest holders in the entity to take into account separately on a current basis their respective shares of the items of income paid to the entity and to determine the character of such items as if such items were realized directly from the source from which realized by the entity (for purposes of the tax laws of the jurisdiction). Entities that are fiscally transparent for U.S. federal income tax purposes include partnerships, common trust funds described under section 584, simple trusts, grantor trusts, as well as certain other entities (including entities that have a single interest holder) that are treated as partnerships or as disregarded entities for U.S. federal income tax purposes.

(iii) *Applicable treaty jurisdiction.* The term *applicable treaty jurisdiction* means the jurisdiction whose income tax treaty with the United States is invoked for purposes of reducing the rate of tax imposed under section 871(a), 881(a), 1461, and 4948(a).

(iv) *Resident.* The term *resident* shall have the meaning assigned to such term in the applicable income tax treaty.

(5) *Application to all income tax treaties.* Unless otherwise explicitly agreed upon in the text of an income tax treaty, the rules contained in this paragraph (d) shall apply in respect of all income tax treaties to which the United States is a party. However, a reduced rate under a tax treaty for a payment of U.S. source income will not be available irrespective of the provisions in this paragraph (d) to the extent that the applicable treaty partner would not grant a reduced rate under the tax treaty to a U.S. resident in similar circumstances, as evidenced by a mutual agreement between the relevant competent authorities or by a public notice of the treaty partner. The Internal Revenue Service shall announce the terms of any such mutual agreement or treaty partner's position

shall affect only U.S. source payments made after announcement of the terms of the agreement or of the position.

(6) *Examples.* This paragraph (d) is illustrated by the following examples. Unless stated otherwise, each example assumes that all conditions for claiming a treaty-reduced tax rate under a U.S. income tax treaty with respect to a payment of U.S. source income are satisfied (other than the condition that the income is treated as derived by a resident of the applicable treaty jurisdiction), including the beneficial ownership requirement and all requirements relating to applicable limitation on benefits provisions. The examples are as follows:

Example 1. (i) *Facts.* Entity A is a business organization formed under the laws of Country X that has an income tax treaty with the United States. Under the laws of Country X, A is liable to tax at the entity level. A is treated as a partnership for U.S. income tax purposes and receives royalties from U.S. sources that are not effectively connected with the conduct of a trade or business in the United States. Some of A's partners are resident in Country X and the other partners are resident in Country Y. Country Y has no income tax treaty in effect with the United States. Article 12 of the U.S.-X tax treaty provides that "royalties derived from sources within a Contracting State by a resident of the other Contracting State shall not exceed 5 percent of the gross amount thereof * * *". Article 4.1 of the treaty provides that for purposes of the treaty, "a 'resident' of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature * * *". Article 4.2 of the treaty provides that in the case of income "derived or paid by a partnership * * *", the term *resident* applies only to the extent that the income derived by such partnership is subject to tax in that State as the income of a resident, either in its hands or in the hands of its partners.

(ii) *Analysis.* Under the U.S.-X income tax treaty, A is a *resident* of Country X within the meaning of Article 4.1 of the treaty. Also, as a resident of Country X taxable on the U.S. source royalty under the tax laws of Country X, A meets the condition under Article 12 of the treaty that it derive the income from sources within the United States. Accordingly, the U.S. source royalty income is treated as derived by a resident of X. Further, A is a beneficial owner of the royalty income, as determined under paragraph (d)(2)(i) of this section. The fact that A's interest holders are also beneficial owners of the royalty income under U.S. tax principles (as partners of A) does not preclude A from qualifying as a beneficial owner for purposes of the treaty. In addition, A may claim benefits under the U.S.-X income tax treaty even though some of its interest holders do not reside in X or reside in a country that does not have an income tax treaty in effect with the United States.

Example 2. (i) Facts. The facts are the same as under *Example 1* except that Article 12 of the U.S.-X income tax treaty provides that royalties "paid" to a resident of a treaty country from sources within the other may be taxed in both countries but the tax is limited to 10 percent of the gross amount of the royalties in the source country. Further the U.S.-X income tax treaty includes no provision relating to income paid or derived through a partnership.

(ii) *Analysis.* As in *Example 1*, A is entitled to claim the benefit of the U.S.-X income tax treaty with respect to the U.S. source royalty income paid to A. The term *paid* and the term *derived* are used interchangeably in U.S. income tax treaties. Accordingly, the U.S. source royalty income is treated as derived by a resident of X. It is irrelevant that the U.S.-X treaty does not include a provision relating to income paid or derived through a partnership.

Example 3. (i) Facts. The facts are the same as under *Example 2*, except that Country Y has an income tax treaty in effect with the United States. Article 12 of the U.S.-Y income tax treaty reduces the rate on U.S. source royalty income to zero if the income is paid to a resident of Country Y who beneficially owns the income. Article 4.1 of the U.S.-Y treaty provides that for purposes of the treaty, "a 'resident' of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature * * *". The U.S.-Y treaty does not include a provision relating to income paid or derived through a partnership. Under the laws of Country Y, A is treated as fiscally transparent entity. Thus, A's partner, T, a corporation organized in Country Y is required to include in income on a current basis its allocable share of A's income. T is a beneficial owner of the income paid to A, as determined under paragraph (d)(2)(ii) of this section.

(ii) *Analysis.* As in *Example 2*, A is entitled to claim the benefit of the U.S.-X income tax treaty with respect to the U.S. source royalty income paid to A. However, T is also entitled to claim the benefit of the exemption under the U.S.-Y treaty for its allocable share of the U.S. source royalty income. T meets the conditions of Article 12 because it is a resident of Country Y within the meaning of Article 4.1 of the treaty. Also, as a resident of Country Y taxable on the U.S. source royalty under the tax laws of Country Y, it meets the condition under Article 12 of the treaty that income from sources within the United States be paid to a resident. Accordingly, T's allocable share of the U.S. source royalty income is treated as derived by a resident of Y. It is irrelevant that the U.S.-Y treaty does not include a provision relating to income paid or derived through a partnership.

Example 4. (i) Facts. Entity A is a business organization organized under the laws of Country V that has no income tax treaty with the United States. A is treated as a partnership for U.S. tax purposes and receives royalty income from U.S. sources that is not effectively connected with the conduct of a trade or business in the United

States. G, one of A's interest holders, is a corporation organized under the laws of Country X. X treats A as an entity taxable at the entity level and not as a fiscally transparent entity. Therefore, G is not required to include in income on a current basis its share of A's income. Instead, G is taxed in X on its share of A's profits when distributed by A and such distribution is taxed to G as a dividend. H, A's other interest holder, is a corporation organized in Country Y. Y treats A as a fiscally transparent entity and requires H to include in income on a current basis its allocable share of A's income. Both X and Y have an income tax treaty in effect with the United States. Article 12 of the U.S.-X income tax treaty provides that royalties paid to a resident of a treaty country from sources within the other may be taxed in both countries but the tax is limited to 5 percent of the gross amount of the royalties in the source country. Article 4.1 of the U.S.-X treaty provides that for purposes of the treaty, a "'resident' of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature * * *". The U.S.-X treaty does not include a provision relating to income paid or derived through a partnership. Article 12 of the U.S.-Y treaty provides that "royalties derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State". Article 4.1 of the U.S.-Y treaty provides that, for purposes of the treaty, "'resident' of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature * * *". Article 4.2 of the U.S.-Y treaty provides that in the case of income "derived or paid by a partnership * * *", the term resident applies only to the extent that the income "derived by such partnership is subject to tax in that State as the income of a resident, either, in its hands or in the hands of its partners.

(ii) *Analysis.* A may not claim the benefit of any income tax treaty since it is not a resident of a country with which the United States has such a treaty. This result occurs regardless of how A is treated for U.S. tax purposes or for purposes of the tax laws of Country V. G may not claim the benefits of Article 12 of the U.S.-X treaty. Under the tax laws of X, G's share of the U.S. source royalty income paid to A is not treated as derived by a resident of X since, under X's tax laws, A, rather than G, is required to account for income received by A. This result occurs even if A distributes the royalty amount immediately after receiving it because, in such a case, G would be taxable on an amount treated as a profit distribution from A and not on royalty income received from sources within the United States. The fact that, for U.S. tax purposes, G is treated as the taxpayer for its allocable share of A's income is not relevant for purposes of determining whether, for purposes of Article 12 of the U.S.-X income tax treaty, G's share of the income paid to A is treated as derived by a resident of X. For this purpose, the laws of

Country X govern the determination of whether G meets this condition. On the other hand, H may claim an exemption from U.S. tax on its share of the royalty income received by A under Article 12 of the U.S.-Y treaty because, under the tax laws of Y, H rather than A, is required to account for income received by A. Accordingly, H's share of the U.S. source royalty income paid to A is treated as derived by a resident of Y.

Example 5. The facts are the same as in *Example 4*, except that A is a business organization formed under the laws of a U.S. State as a limited liability company. The consequences are the same as described in *Example 4*. G is not eligible for benefits under Article 12 of the U.S.-X income tax treaty since, under X's tax laws, A, rather than G, is required to account for income received by A. Under section 881(a), G is liable for U.S. income tax on its allocable share of A's U.S. source royalty income at a 30 percent rate and A must withhold 30 percent from G's allocable share under section 1442. Similarly, H may claim an exemption from U.S. tax on its share of the royalty income received by A under Article 12 of the U.S.-Y treaty because, under the tax laws of Y, H rather than A, is required to account for income received by A.

Example 6. The facts are the same as in *Example 4*, except that A is a so-called dual organized entity. In addition to being organized under the laws of Country V, A has also been organized under the laws of the United States pursuant to the State Z domestication statute. Accordingly, both Country V and the United States regard entity A as a domestic entity existing only in that jurisdiction. Further, Country X and Country Y regard A as a Country V entity. A is treated as a partnership for U.S. tax purposes. The fact that A is a dual organized entity that is regarded differently in Countries X or Y and the United States does not impact the relevant tax treaty analysis. As in *Example 4*, A may not claim the benefit of any income tax treaty since it is not a resident of a country with which the United States has such a treaty. Similarly, G is not eligible for benefits under Article 12 of the U.S.-X income tax treaty since, under X's tax laws, A, rather than G, is required to account for income received by A. Under section 881(a), G is liable for U.S. income tax on its allocable share of A's U.S. source royalty income at a 30 percent rate. Because A is treated as a U.S. partnership for U.S. tax purposes, A must withhold 30 percent from G's allocable share under section 1442. H may claim an exemption from U.S. tax on its share of the royalty income received by A under Article 12 of the U.S.-Y income tax treaty because, under the tax laws of Y, H rather than A, is required to account for the income received by A.

Example 7. The facts are the same as in *Example 5*, except that A distributes all U.S. source royalty income to its interest holders immediately following A's receipt of such income. The consequences are the same as described in *Example 5*. G remains ineligible for benefits under Article 12 of the U.S.-X income tax treaty since, under X's tax laws, A, rather than G, is required to account for the royalty income received by A. The fact

that A distributes income on a current basis to G is irrelevant even if Country X taxes G on such distributions on a current basis. Country X regards such distributions to G as a distribution of profits from A to G rather than an item of U.S. source royalty income of G. H remains eligible for benefits under Article 12 of the U.S.-Y income tax treaty with respect to H's allocable share of the U.S. source royalty treatment received by A.

Example 8. The facts are the same as in **Example 5**, except that Country X pursuant to a Country X anti-deferral regime requires that G account for on a current basis as a deemed distribution G's pro rata share of A's net passive income. For purposes of the anti-deferral regime, the U.S. source royalty income of G is regarded as passive income. The consequences are the same as described in **Example 5**. G remains ineligible for benefits under Article 12 of the U.S.-X income tax treaty because, under X's tax laws, A, rather than G, is required to account for the royalty income received by A. The fact that G receives a current deemed distribution of net passive income is irrelevant even if Country X taxes G on such deemed distributions on a current basis. Country X regards such deemed distributions to G as a distribution of profits from A to G rather than an allocation to G of G's share of A's U.S. source royalty income. H remains eligible for benefits under Article 12 of the U.S.-Y income tax treaty with respect to H's allocable share of the U.S. source royalty treatment received by A.

Example 9. (i) **Facts.** Entity A is a business organization formed under the laws of Country X that has an income tax treaty with the United States. A has made a valid election under § 301.7701-3(c) of this chapter to be treated as a corporation for U.S. tax purposes and receives royalty income from sources within the United States that is not effectively connected with the conduct of a trade or business in the United States. G, A's sole shareholder, is a corporation organized under the laws of Country X. Under the tax laws of X, A is treated as a fiscally transparent entity and, therefore, G is required to include in income on a current basis its share of A's income. Article 12 of the U.S.-X tax treaty provides that "royalties derived from sources within a Contracting State by a resident of the other Contracting State shall not exceed 5 percent of the gross amount thereof . . .". Article 4.1 of the treaty provides that for purposes of the treaty, a "' resident' of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature * * *". Article 4.2 of the treaty provides that in the case of income derived or paid by a partnership * * * the term *resident* applies only to the extent that the income derived by such partnership is subject to tax in that State as the income of a resident, either, in its hands or in the hands of its partners.

(ii) **Analysis.** A does not qualify for benefits under the U.S.-X income tax treaty because A is treated as a fiscally transparent entity under the tax laws of X and thus is not a resident of X for purposes of the treaty. G, on

the other hand, qualifies for benefits under the U.S.-X treaty with respect to the U.S. source royalty income received by A because, under the tax laws of X, G is required to account for the income received by A on a current basis. This result applies even though, for U.S. tax purposes, A is treated as a corporate entity. Accordingly, the U.S. royalty income paid to A is treated as derived by G, a resident of X, as determined under the tax laws of X. Based on G's qualification for treaty benefits with respect to the U.S. source royalty income, A, as the taxpayer under U.S. tax laws, may claim that the income that it receives for U.S. tax purposes is eligible for benefit under the U.S.-X treaty.

Example 10. The facts are the same as in **Example 9**, except that A is a corporation organized under the laws of a U.S. State and is, therefore, a domestic corporation. A may not claim under the U.S.-X income tax treaty a reduction of the rate of U.S. tax otherwise imposed on its income under section 11. A reduced rate of tax is unavailable under the U.S.-X treaty based upon the savings clause in Article 1 of the U.S.-X treaty. Thus, A remains fully taxable under U.S. tax laws as a domestic corporation.

Example 11. (i) **Facts.** Entity A is a business organization organized under the laws of Country V that has no income tax treaty with the United States. A is treated as a partnership for U.S. tax purposes and receives royalty income from U.S. sources that is not effectively connected with the conduct of a trade or business in the United States. A is directly owned by H and J. J is a corporation organized in Country Z which treats A as fiscally transparent and J as an entity taxable at the entity level. Accordingly, Country Z requires J to include in income on a current basis J's share of A's U.S. source royalty income. H, A's other direct interest holder, is a corporation organized in Country Y. H, in turn is owned by E and F, both of which are entities organized in Country X. E and F are each wholly owned by C which is a corporation organized in Country V. Y treats both A and H as fiscally transparent entities. X treats A, H, and E as fiscally transparent entities. X treats F as an entity taxable at the entity level. Accordingly, X requires F to include in income on a current basis F's indirect share of A's U.S. source royalty income. H and J are treated as corporations for U.S. federal income tax purposes while E, F, and C are treated as partnerships for U.S. federal tax purposes. X, Y and Z each have in effect an income tax treaty with the United States. Article 12 of the U.S.-X and the U.S.-Z income tax treaty provides that royalties paid to a resident of a treaty country from sources within the other may be taxed in both countries but the tax is limited to 5 percent of the gross amount of the royalties in the source country. Article 4.1 of the U.S.-Z and the U.S.-Z treaty provides that for purposes of the treaty, a "' resident' of a Contracting state means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature . . .". Article 4.2 of the U.S.-X and the U.S.-Z treaty provides that in the case of income "derived or paid by a

partnership . . .", the term *resident* applies only to the extent that the income derived by such partnership is subject to tax in that State as the income of a resident, either in its hands or in the hands of its partners. Article 12 of the U.S.-Y treaty provides that "royalties derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State." Article 4.1 of the U.S.-Y treaty provides that, for purposes of the treaty, a "' resident' of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature . . .". The U.S.-Y treaty does not include a provision relating to income paid or derived through a partnership.

(ii) **Analysis.** A may not claim, based on its own status, the benefit of any income tax treaty since it is not a resident of a country with which the United States has such a treaty. This result occurs regardless of how A is treated for U.S. tax purposes or for purposes of the tax laws of Country V. H may not claim the benefits of any treaty, including the benefits of Article 12 of the U.S.-Y treaty, because H does not qualify as a resident of Y or any other treaty jurisdiction. Similarly, neither E nor C may claim the benefits of any income tax treaty, since neither entity qualifies as a resident of X or any other treaty jurisdiction. F, however, may claim the benefit of Article 12 of the U.S.-X treaty with respect to F's indirect share of the U.S. source royalty income received by A. Such income is treated as derived by F, a resident of X, because X qualifies as a resident of X and, under the tax laws of X, F is the first entity in the A, H, F chain that is not itself treated as fiscally transparent in X. J may claim the benefits of Article 12 of the U.S.-Z treaty with respect to J's indirect share of the U.S. source royalty income paid to A because, under the tax laws of Z, J rather than A, is required to account for income received by A. Accordingly, J's share of the U.S. source royalty income paid to A is treated as derived by a resident of Z. As illustrated in this example, the U.S. federal income tax treatment of A, J, H, E, F and C is irrelevant for purposes of determining the extent to which U.S. source royalty income paid to A is eligible for treaty-reduced tax rates under the U.S. income tax treaty with X, Y or Z.

Example 12. (i) **Facts.** Entity A is a business organization formed under the laws of Country X that has an income tax treaty in effect with the United States. A owns all of the stock of a U.S. corporation B. Under the tax laws of X, A is subject to tax at the entity level. For U.S. tax purposes, A is treated as a branch of its single owner, G. G is a corporation organized under the laws of X. A receives dividends from B that are from U.S. sources and are not effectively connected with the conduct of a trade or business in the United States. Article 10 of the U.S.-X tax treaty provides that "dividends derived from sources within a Contracting state by a resident of the other Contracting State shall not exceed 5 percent of the gross amount thereof . . .". Article 4.1 of the treaty provides that for purposes of the treaty, a "' resident' of a Contracting State

means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature The U.S.-X treaty contains no provision regarding income paid or derived through a partnership.

(ii) *Analysis.* For U.S. tax purposes, A is treated as a wholly-owned business entity that is disregarded for federal income tax purposes. However, because, under the laws of X and under X's application of the treaty, A is treated as deriving the dividend income as a resident of X, A qualifies for benefits under the treaty with respect to the U.S. source dividend. Thus, G, as the taxable person for U.S. tax purposes, may claim the benefit of a reduced rate under Article 10 of the U.S.-X treaty based on A's eligibility for tax treaty benefits.

(7) *Effective date.* This paragraph (d) applies to amounts paid on or after January 1, 1998.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: June 26, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97-17467 Filed 6-30-97; 12:19 pm]

BILLING CODE 4830-01-U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01-97-047]

RIN 2115-AA97

Safety Zone: New Haven Harborfest Fireworks Display, New Haven, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on July 4, 1997, for the New Haven Harborfest Fireworks Display to be held in New Haven Harbor, New Haven, CT. This safety zone is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with this fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: This regulation is effective on July 4, 1997, from 9 p.m. until 10 p.m.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander J.A. McCarthy, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468-4444.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, good cause exists for not publishing a notice of proposed rulemaking (NPRM) and for making this rule effective in less than 30 days after **Federal Register** publication. The sponsor of the event did not provide the Coast Guard with the final details for the event in sufficient time to publish an NPRM or a final rule 30 days in advance. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of this event is contrary to the public interest since the fireworks display is for the benefit of the public.

Background and Purpose

The sponsor, City of New Haven, CT, of New Haven, CT, requested that a fireworks display, be permitted in New Haven Harbor, located approximately 1000 feet east of Long Wharf, New Haven, CT. This regulation establishes a temporary safety zone in all waters of New Haven, CT within a 1200 foot radius of the fireworks launching barges. The safety zone is in effect on July 4, 1997, from 9:00 p.m. until 10:00 p.m. and is necessary to protect the maritime community from the safety hazards associated with this fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on scene representative.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Entry into this zone will be restricted for a brief period of time on July 4, 1997. Although this regulation prevents traffic from transiting a portion of the Atlantic Ocean, off New Haven, CT, the effect of this regulation will not be significant for several reasons: the duration of the event is limited; the event is at a late hour; all vessel traffic may pass to the western side of this safety zone; and

extensive, advance maritime advisories will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For reasons addressed under the Regulatory Evaluation above, the Coast Guard finds that this rule will not have a significant impact on a substantial number of small entities. If however, you think that your business or organization qualifies as a small entity and that this rule will have a significant impact upon your business or organization, please submit a comment (see ADDRESSES) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

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

Federalism

The Coast Guard has analyzed this action under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1b, as revised by 59 FR 38654, July 29, 1994, this rule is categorically excluded from further environmental documentation.

A Categorical Exclusion Determination and an Environmental Analysis Checklist are included in the docket and are available for inspection or copying at the location indicated under ADDRESSES. An appropriate environmental analysis of the fireworks program will be conducted in conjunction with the marine event permitting process.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping

requirements, Security measures, Waterways.

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

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5; 49 CFR 1.46.

2. A temporary section, 165.T01-047, is added to read as follows:

§ 165.T01—CGD1-047; New Haven Harborfest Fireworks Display, New Haven, CT.

(a) *Location.* The safety zone includes all waters of New Haven Harbor within a 1200 foot radius of the fireworks barge, located approximately 1000 feet east of Long Wharf in New Haven Harbor, in New Haven, CT., in approximate position 40°17'31" N, 072°54'49" W. (NAD 1983)

(b) *Effective date.* This section is effective on July 4, 1997, from 9 p.m. until 10 p.m., unless terminated sooner by the Captain of the Port, Long Island Sound. In case of inclement weather, this regulation will be effective on July 5, 1997, at the same times.

(c) *Regulations.* The general regulations contained in section 165.23 apply.

Dated: June 16, 1997.

P.K. Mitchell,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 97-17389 Filed 7-1-97; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN 104-1-9706(b); TN 148-1-9705(b); FRL-5849-1]

Approval of Revisions to the Tennessee State Implementation Plan Regarding Visibility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the visibility protection chapter for the State of Tennessee submitted to EPA on February 9, 1993, and December 19, 1994, by Tennessee, through the Tennessee Department of Environment and Conservation (TDEC). The intended effect of these revisions is to meet the

requirements of the Clean Air Act (CAA) for the purpose of assuring visibility protection in mandatory Class I Federal areas.

DATES: This final rule is effective September 2, 1997 unless adverse or critical comments are received by August 1, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to William Denman at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference files TN104-01-9706 and TN148-01-9705. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460
Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. William Denman 404/562-9030

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, 9th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1531.

FOR FURTHER INFORMATION CONTACT:

William Denman at 404/562-9030.

SUPPLEMENTARY INFORMATION: On February 9, 1993 (reference file TN104), and December 19, 1994 (reference file TN148) the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), submitted to the EPA for incorporation into their SIP, revisions to Chapter 1200-3-9 "Construction and Operating Permits," a non-regulatory visibility long term strategy, and a new Chapter 1200-3-23 "Visibility Protection." The EPA is taking no action on the revisions to Chapter 1200-3-9 because these revisions were replaced in a subsequent submittal and action was taken by EPA to approve these revisions on July 18, 1996 (61 FR 37387). On May 6, 1997, Tennessee withdrew the nonregulatory portion of the visibility protection plan because Tennessee is revising its visibility long-term strategy to meet the requirements of 40 CFR 51 Subpart P.

The EPA is approving the entire chapter 1200-3-23 "Visibility Protection" into the SIP because it meets the regulatory requirements of 40 CFR 51 Subpart P. Tennessee's visibility protection chapter contains the following provisions for the protection of visibility in Federal Class I areas.

1200-3-23-.01 Purpose

This section states that the purpose of this chapter is to assure reasonable progress toward meeting the goal of prevention of any future, and remedy of any existing impairment of visibility in mandatory Class I Federal areas in which impairment results from man-made air pollution.

1200-3-23-.02 Definitions

Definitions of the following terms are included in this section: Best Available Retrofit Technology (BART), existing stationary facility, Federal Class I Area, fixed capital cost, in existence, in operation, mandatory Class I Federal Area, natural conditions, reconstruction, visibility impairment, significant impairment, integral vista, continuous program of physical on-site construction, substantial loss, adverse impact on visibility, pollutant, and reasonably attributable. The definitions are consistent with EPA and CAA requirements.

1200-3-23-.03 General Visibility Protection Standards

This section states that no person shall cause or allow emissions in excess of the standards in this chapter, and that possession of a valid permit shall not protect the source from enforcement actions if permit conditions are not met. Also, upon mutual agreement of the owner/operator of a source and the Technical Secretary, a more restrictive emissions limitation than specified in this chapter may be established, operating parameters may be established as a binding limit, those limits will be stated as special condition(s) for any permit or order concerning the source, and violation of any accepted special limitation is grounds for revocation of the issued permit.

1200-3-23-.04 Specific Emission Standards for Existing Stationary Facilities

This section states that for existing stationary sources which cause a visibility impairment in any mandatory Class I Federal Area, the Technical Secretary shall specify on the operating permit(s) as permit conditions the emission limitation that is best available retrofit technology (BART).

1200-3-23-.05 Specific Emission Standards for Existing Sources

This section states that for any existing source that causes visibility impairment in any mandatory Class I Federal Area, the Technical Secretary may specify on the operating permit(s) an emissions limitation that is equivalent to BART. This section also states that existing sources subject to the provision of rule (.04) are not subject to the provisions of this Rule.

1200-3-23-.06 Visibility Standards for New and Modified Sources

This section states that a new "major stationary source" or a "major modification" construction in an attainment area or unclassifiable area must meet Prevention of Significant Deterioration (PSD) requirements, and in a nonattainment area must meet applicable New Source Review (NSR) requirements. In addition, for any new source or modification, the Technical Secretary may require BART.

1200-3-23-.07 Visibility Monitoring Requirements

This section states that the Technical Secretary may require visibility monitoring in the vicinity of a source regulated by this Chapter and that the monitoring shall be done in accordance with the requirements as specified by the Technical Secretary.

1200-3-23-.08 Exemptions from BART Requirements

This section provides exemptions from BART as follows:

1. Any existing stationary facility subject to the BART requirement may apply to the Administrator of the EPA through the Technical Secretary for an exemption.

2. An application under this rule must include all available documentation relevant to the impact of the source's emissions on visibility in any mandatory Class I Federal Area and a demonstration by the existing stationary facility that it does not or will not, by itself or in combination with other sources, emit any air pollutant which may be reasonably anticipated to cause a significant impairment of visibility in any mandatory Class I Federal Area.

3. A fossil-fuel fired power plant with a total generating capacity of 750 megawatts or more may receive an exemption from BART only if the owner/operator demonstrates to the Technical Secretary that it is located at such a distance from all mandatory Class I Federal Areas that it will not emit any air pollutant which may reasonably be anticipated to cause significant impairment of visibility.

4. The existing stationary source must give written notice to all affected Federal Land Managers of any application for exemption.

5. The Federal Land Manager may provide an initial recommendation or comment on the disposition of such application.

6. Within 90 days of receipt of an application for exemption the Technical Secretary will provide notice of receipt and notice of opportunity for public hearing. If the Technical Secretary concurs, the application for exemption will be forwarded to the Administrator of EPA who may grant or deny the exemption. An exemption granted by the Administrator of the EPA will be effective only upon concurrence by all affected Federal Land Managers.

Final Action

The EPA is approving the submitted revisions into the Tennessee SIP as described in the **SUPPLEMENTARY INFORMATION** section. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 2, 1997 unless, by August 1, 1997 adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 2, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the

procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2) and 7410(k)(3).

C. Unfunded Mandates

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more

to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 17, 1997.

A. Stanley Meiburg,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(147) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(147) Addition of a new chapter 1200-3-23 "Visibility Protection" to the Tennessee Air Pollution Control Regulations submitted by the Tennessee Department of Environment and Conservation on February 9, 1993, and December 19, 1994.

(i) Incorporation by reference.

(A) Chapter 1200-3-23 "Visibility Protection," effective July 24, 1994.

(ii) Other material. None.

* * * * *

[FR Doc. 97-17183 Filed 7-1-97; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300500; FRL-5719-9]

RIN 2070-AB78

Tebufenozide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of the insecticide tebufenozide in or on the following raw agricultural commodities: apples; apple pomace; cottonseed, undelinted; cottonseed meal; cottonseed oil; cottonseed hulls, cotton gin byproducts; milk; meat, meat fat, and meat by-products of cattle, sheep, and goats; and horse meat in connection with EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of tebufenozide on apples in Pennsylvania, New Jersey, Virginia, West Virginia, Michigan and New York. This regulation establishes maximum permissible levels for residues of tebufenozide on the above raw agricultural commodities pursuant to section 408(l)(6) of the Federal Food, Drug and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. These tolerances will expire and be revoked on June 30, 1998.

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

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP-300500], 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-300500], 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-300500]. 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: Pat Cimino, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202. (703) 308-8328, e-mail: cimino.pat@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 the insecticide tebufenozide (benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide) in or on apples at 1.0 part per million (ppm); apple pomace at 2.0 ppm; cottonseed, undelinted at 0.2 ppm; cottonseed meal at 0.5 ppm; cottonseed oil at 1.3 ppm; cottonseed hulls at 0.8 ppm; cotton gin byproducts at 4.0 ppm; milk at 0.05

ppm; meat of cattle, sheep, goats, and horses at 0.02 ppm; fat of cattle, sheep, and goats at 0.10 ppm; meat by-products (except liver kidney) of cattle, sheep, and goats at 0.10 ppm; liver of cattle, sheep, and goats at 1.0 ppm; and kidney of cattle, sheep, and goats at 0.02 ppm. These tolerances will expire and be revoked by EPA on June 30, 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 Exemptions for Tebufenozide on Apples and FFDCA Tolerances

Between February 13 and April 24, 1997, the New Jersey Department of Environmental Protection, Virginia Department of Agriculture and Consumer Affairs, New York Department of Environmental Conservation, and Pennsylvania, West Virginia, and Michigan Departments of Agriculture requested a specific exemption under FIFRA section 18 for the use of tebufenozide on apples to control tufted apple bud moth in PA, NJ, VA and WV and oblique banded leafroller in NY and MI. These pests are becoming increasingly resistant to registered pesticide alternatives and growers are experiencing both quality and yield losses from infestations. The registered alternative products do not provide control of these pests and lack of a viable alternative is responsible for growing levels of economic loss over the last several years. Growers will experience significant economic loss if these pests are not controlled. After having reviewed their submissions, EPA concurs that emergency conditions exist.

Between March 18 and June 20, 1997, the Texas, South Carolina, Louisiana, Florida, Mississippi, Arkansas, Alabama, Georgia and New Mexico Departments of Agriculture requested a specific exemption under FIFRA Section 18 for the use of tebufenozide on cotton to control beet armyworm in cotton. This pest is resistant to control by currently registered products and growers have experienced significant economic losses from infestations of this pest. After having reviewed their submissions, EPA concurs that emergency conditions exist.

As part of its assessment of these applications for emergency exemption, EPA assessed the potential risks presented by residues of tebufenozide

on apples. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided to grant the section 18 exemptions only after concluding that the necessary tolerance under FFDCA section 408(l)(6) would clearly be consistent with the new safety standard and with FIFRA section 18. These tolerances for tebufenozide will permit the marketing of apples treated in accordance with the provisions of the section 18 emergency exemptions. Consistent with the need to move quickly on the emergency exemptions and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e) as provided in section 408(l)(6). Although these tolerances will expire and be revoked by EPA on June 30, 1998, under FFDCA section 408(l)(5), residues of tebufenozide not in excess of the amount specified in the tolerances remaining in or on apples, milk, meat, meat fat and meat by-products after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, the emergency exemptions. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

EPA has not made any decisions about whether tebufenozide meets the requirements for registration under FIFRA section 3 for use on apples or whether permanent tolerances for tebufenozide for apples would be appropriate. This action by EPA does not serve as a basis for registration of tebufenozide by a State for special local needs under FIFRA section 24(c). Nor does this action serve as the basis for any States other than Pennsylvania, New Jersey, Virginia, West Virginia, New York or Michigan to use this product on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR 180.166. For additional information regarding the emergency exemptions for tebufenozide, 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. For shorter term risks, EPA calculates a 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 relationships. 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 reliable federal and private market basket survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using the upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group.

IV. Aggregate Risk Assessments 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

1. *Acute toxicity.* No acute toxicological effects of concern were identified by the Agency.

2. *Short- and intermediate-term toxicity.* No short- or intermediate-term toxicological effects of concern were identified by the Agency.

3. *Chronic toxicity.* The RfD for tebufenozide is 0.018 milligrams(mg)/kilogram(kg)/day and is based on a 1-year feeding study in dogs with a NOEL of 1.8 mg/kg/day and an uncertainty

factor of 100. Decreased red blood cells, hematocrit, and hemoglobin and increased heinz bodies, reticulocytes, and platelets were observed at the lowest-observed effect level (LOEL) of 8.7 mg/kg/day.

4. *Cancer.* Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), the Agency has classified tebufenozide as a Group "E" chemical (no evidence of carcinogenicity) based on the results of carcinogenicity studies in two species. There was no evidence of carcinogenicity in a 2-year rat study and an 18-month mouse study.

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.

A permanent tolerance of 0.1 ppm has been established for residues of tebufenozide in or on walnuts and an apple import tolerance has been established. Tebufenozide is not registered for indoor or outdoor residential uses.

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 one day or single exposure. No acute toxicological effects of concern have been identified for tebufenozide and an acute risk assessment is not required.

2. *Chronic exposure.*—i. *Dietary-food exposure.* In conducting exposure assessments for this section 18 request, EPA used tolerance level residues and assumed that 100% of the crop would be treated with the pesticide (TMRC worst-case analysis assumptions, as described above).

ii. *Drinking water exposure.* Environmental fate data submitted to the Agency suggest that tebufenozide is moderately persistent to persistent and mobile and could potentially leach to groundwater and runoff to surface water under certain environmental conditions.

No Maximum Concentration Level or Health Advisory Level has been established for residues of tebufenozide in drinking water. There is no entry for

tebufenozide in the "Pesticides in Groundwater Database" (EPA 34-12-92-001, Sept. 1992).

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 tebufenozide to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with tebufenozide 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.

iii. *Non-dietary, non-occupational exposure.* Non-dietary, non-occupational exposure is not expected because tebufenozide is not registered for indoor or outdoor residential 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 tebufenozide 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, tebufenozide 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 tebufenozide has a common mechanism of toxicity with other substances.

D. Safety Determinations for U.S. Population

1. *Acute risk.* No acute toxicological effects of concern have been identified for tebufenozide and an acute risk assessment is not required.

2. *Short- and intermediate-term risk.* Because no toxicity concerns have been identified by the Agency for short- or intermediate-term exposure to

tebufenozide and no indoor or outdoor residential uses are registered, a short- or intermediate-term aggregate risk assessment is not required.

3. *Chronic risk.* Using the conservative TMRC exposure assumptions described above, EPA has concluded that chronic aggregate exposure to tebufenozide from food will utilize 31% of the RfD for the U.S. population. Aggregate exposure to tebufenozide from food utilizes <81% of the RfD for all major identifiable subgroups, including infants and children. 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 tebufenozide 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 chronic aggregate exposure to tebufenozide residues.

E. Determination of Safety for Infants and Children

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

Based on current toxicological data requirements, the data base for developmental and reproductive studies for tebufenozide is complete. The data indicate that there are no special pre- or post-natal toxicity concerns for infants and children and that the standard uncertainty factor is adequate to protect the safety of infants and children.

Developmental toxicity was not observed in developmental studies using rats and rabbits. The NOEL for developmental effects in both rats and rabbits was 1,000 mg/kg/day (HDT), which is the limit dose for testing in developmental studies.

1. *Developmental toxicity studies.*—i. *Rat developmental toxicity.* The maternal (systemic) NOEL was 250 mg/kg/day and the LOEL was 1,000 mg/kg/day based on decreased weight gain and food consumption. The developmental (pup) NOEL was >1,000 mg/kg/day, the highest dose tested (HDT).

ii. *Rabbit developmental toxicity.* The maternal (systemic) and developmental (pup) NOELs were >1,000 mg/kg/day (HDT).

2. *Reproductive toxicity studies.*—*Rat reproduction toxicity.* In the two-generation reproductive toxicity study in the rat, the parental (systemic) NOEL was 0.85 mg/kg/day. Splenic pigmentation changes and extramedullary hematopoiesis occurred in the parents at the LOEL of 12.1 mg/kg/day (in males and females and in both generations). In addition to these effects, decreased body weight gain and food consumption occurred at 171.1 mg/kg/day.

The reproductive (pup) NOEL was 12.1 mg/kg/day and the LOEL was 171.1 mg/kg/day based on a slight increase, in both generations, in the number of pregnant females that did not deliver and a slight increase in the number of second generation pregnant females that had difficulty delivering and had to be sacrificed. Additionally, in second generation dams at the LOEL, the length of gestation increased and implantation sites decreased significantly. Finally, the number of pups per litter decreased on Lactation Day (LD) 4 to 90% of the controls for the first generation and on LD's 0 and 4 (80%) for the second generation. Because these reproductive effects occurred in the presence of parental (systemic) toxicity, these data do not suggest an increased post-natal sensitivity to children and infants (that infants and children might be more

sensitive than adults) to tebufenozide exposure.

3. *Pre- and post-natal sensitivity.* The developmental (pup) NOELs of >1,000 mg/kg/day (HDT) from the rat and rabbit developmental toxicity studies demonstrate that there is no developmental (pre-natal) toxicity present for tebufenozide. Additionally, these developmental NOELs are greater than 500-fold higher than the NOEL of 1.8 mg/kg/day from the 1-year feeding study in dogs which was the basis of the RfD.

In the reproductive toxicity study in rats, the reproductive NOEL (12.1 mg/kg/day) is 14-fold higher than the parental NOEL (0.85 mg/kg/day) and indicates that post-natal toxicity in the reproductive studies occurs only in the presence of significant parental toxicity.

These developmental and reproductive studies indicate that tebufenozide does not have additional sensitivity for infants and children in comparison to other exposed groups.

4. *Acute risk.* No acute toxicological effects of concern have been identified for tebufenozide and an acute risk assessment is not required.

5. *Short- and intermediate-term risk.* Because no toxicity concerns have been identified by the Agency for short- or intermediate-term exposure to tebufenozide and no indoor or outdoor residential uses are registered, a short- or intermediate-term aggregate risk assessment is not required.

6. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that the percentage of RfD that will be utilized by dietary (food only) exposure to residues of tebufenozide ranges from 41% for nursing infants up to 80% for non-nursing infants <1 year old. 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 chronic exposure to tebufenozide 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 to infants and children from chronic aggregate exposure to tebufenozide residues.

V. Other Considerations

A. Metabolism in Plants and Animals

The metabolism in/on plants is adequately understood. The residue of concern is the parent compound,

tebufenozide per se as specified in 40 CFR 180.482.

The metabolism in animals is not adequately understood; however, for purposes of these Section 18 exemptions only, the Agency considers the residue of concern to be the parent compound, tebufenozide per se. Estimates of secondary residues in ruminant tissues were extrapolated from data from a goat metabolism study submitted to support the import tolerance on apples. The recommended secondary ruminant tissue residues are based on high level dosing and maximum radioactive residues found in goat tissues and are likely conservative estimates of the actual residue levels that would occur in ruminants fed apple pomace containing tebufenozide residues.

B. Analytical Enforcement Methodology

The HPLC/UV method, TR 34-94-38 is adequate to detect residue so the parent compound in apples. At this time, there are no analytical methods available to the Agency to detect secondary residues in animal matrixes as a result of this use.

C. Magnitude of Residues

Residues of tebufenozide are not expected to exceed the following levels as a result of this use: 1.0 ppm in apples; 2.0 ppm in apple pomace; 0.05 ppm in milk; 0.02 ppm in meat of cattle, sheep, goat, and horse; 0.1 ppm in fat of cattle, sheep, and goats; 0.1 ppm in meat by-products (except liver and kidney) of cattle, sheep, and goats; 1.0 ppm in liver of cattle, sheep, and goat; and 0.02 ppm in kidneys of cattle, sheep, and goats.

D. International Residue Limits

There are no Codex, Canadian, or Mexican international residue limits established for use of tebufenozide on apples.

VI. Conclusion

Therefore, tolerances in connection with the FIFRA section 18 emergency exemptions are established for residues of tebufenozide in/on the following: apples - 1.0 ppm; apple pomace - 2.0 ppm; cottonseed, undelinted - 0.2 ppm; cottonseed meal - 0.5 ppm; cottonseed oil - 1.3 ppm; cottonseed hulls - 0.8 ppm; cotton gin byproducts - 4.0 ppm; milk - 0.05 ppm; meat of cattle, sheep, goat, and horse - 0.02 ppm; fat of cattle, sheep, and goats - 0.1 ppm; meat by-products (except liver and kidney) of cattle, sheep, and goats - 0.1 ppm; liver of cattle, sheep, and goat - 1.0 ppm; and kidneys of cattle, sheep, and goats - 0.02 ppm.

VII. Objections and Hearing Requests

The new FFDC 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 September 2, 1997, file written objections to any aspect of this regulation (including the revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record.

Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP-300500] (including any comments and data submitted electronically). 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.

Electronic comments may be sent directly to EPA:

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

This final rule establishes a tolerance under section 408 of the FFDC and is in response to a petition received by the Agency requesting the establishment of such a tolerance. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the

Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, because tolerances that are established on the basis of a petition under section 408(d) of FFDC, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Prior to the recent amendments to the FFDC, however, EPA had treated such actions as subject to the RFA. The amendments to the FFDC clarify that no proposed rule is required for such regulatory actions, which makes the RFA inapplicable to these actions. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact (46 FR 24950, May 4, 1981). In accordance with Small Business Administration (SBA) policy, this determination will be provided to the Chief Counsel for Advocacy of the SBA upon request.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This 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: June 13, 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 180.482 is amended as follows:

a. In paragraph (a) by adding a heading.

b. In paragraph (b) by revising the introductory text and alphabetically adding the entries to the table.

c. By adding the headings and reserving new paragraphs (c) and (d).

§ 180.482 Tebufenozide; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the insecticide benzoic acid 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
Apple pomace	2.0	6/30/98
Apples	1.0	6/30/98
Cattle, fat	0.10	6/30/98
Cattle, kidney	0.02	6/30/98
Cattle, liver	1.0	6/30/98
Cattle, mbyp	0.10	6/30/98
Cattle, meat	0.02	6/30/98
Cotton gin byproducts	4.0	6/30/98
Cottonseed hulls	0.8	6/30/98
Cottonseed meal	0.5	6/30/98
Cottonseed oil	1.3	6/30/98
Cottonseed, undelinted	0.2	6/30/98
Goats, fat	0.10	6/30/98
Goats, kidney	0.02	6/30/98
Goats, liver	1.0	6/30/98
Goats, mbyp	0.10	6/30/98
Goats, meat	0.02	6/30/98
Horses, meat	0.02	6/30/98
* * * * *		
Milk	0.05	6/30/98
* * * * *		
Sheep, fat	0.10	6/30/98
Sheep, kidney	0.02	6/30/98
Sheep, liver	1.0	6/30/98
Sheep, mbyp	0.10	6/30/98
Sheep, meat	0.02	6/30/98
* * * * *		

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

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

[FR Doc. 97-17370 Filed 7-1-97; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-5850-1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Cheshire Ground Water Contamination Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region I announces the deletion of the Cheshire Ground Water

Contamination site from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Connecticut have determined that the Site poses no significant threat to public health or the environment and, therefore, no further remedial measures pursuant to CERCLA are appropriate.

EFFECTIVE DATE: July 2, 1997.

FOR FURTHER INFORMATION CONTACT: Jane Dolan, Remedial Project Manager, U.S. EPA Region I (HBT), JFK Federal Building, Boston, MA 02203, (617) 573-9698.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Cheshire Ground Water Contamination Site, Cheshire, Connecticut.

A Notice of Intent to Delete for this site was published on March 21, 1997 (62 FR 13568). The closing date for comments on the Notice of Intent to Delete was April 21, 1997. EPA received no comments.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of the Hazardous Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-Financed remedial actions in the unlikely event that conditions at the site warrants such action. Section 300.425(e)(3) of the NCP states that Fund-Financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 12, 1997.

Linda M. Murphy,

Director, Office of Site Remediation and Restoration.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the site “Cheshire Ground Water Contamination, Cheshire, Connecticut”.

[FR Doc. 97–17032 Filed 7–1–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 721**

[OPPTS–50581D; FRL–5715–3]

RIN 2070–AB27

Revocation of Significant New Use Rules For Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking two significant new use rules (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for certain chemical substances based on new toxicity data. Based on the data, the Agency determined that it could no longer support a finding that activities not described in the TSCA section 5(e) consent order may result in significant changes in human exposure.

DATES: This rule is effective August 1, 1997.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection

Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460; telephone: 202–554–1404; TDD: 202–554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 31, 1990 (55 FR 45994), EPA issued a SNUR for alkenoic acid, trisubstituted-benzyl-disubstituted-phenyl ester and alkenoic acid, trisubstituted-phenylalkyl-disubstituted-phenyl ester. Because of additional data, EPA has received for these substances, EPA is proposing to revoke the SNURs.

I. Background

The Agency proposed the revocation of the SNURs for these substances in the **Federal Register** of February 11, 1997 (62 FR 6160)(FRL–5580–8). The background and reasons for the revocation of the SNURs are set forth in the preamble to the proposed revocation. The Agency received no public comment concerning the proposed revocation. As a result, EPA is revoking these SNURs.

II. Background and Rationale for Revocation of the Rule

During review of the PMNs submitted for the chemical substances that are the subject of this revocation, EPA concluded that regulation was warranted based on the fact that activities not described in the section 5(e) consent order may result in significant changes in human exposure. Based on these findings, SNURs were promulgated.

EPA has revoked the section 5(e) consent order that is the basis for these SNURs and has determined that it can no longer support a finding that activities not described in the section 5(e) consent order may result in significant changes in human exposure. The proposed revocation of SNUR provisions for these substances designated herein is consistent with this finding.

In light of the above, EPA proposed to revoke the SNUR provisions for these chemical substances. When this revocation becomes final, EPA will no longer require notice of any company's intent to manufacture, import, or process these substances. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Rulemaking Record

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket number 50581D (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 confidential business information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

IV. Regulatory Assessment

This final rule revokes or eliminates an existing regulatory requirement and does not contain any new or amended requirements. As such, the Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). Since this final rule does not impose any requirements, it does not contain any information collections subject to approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or require any other action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has determined that SNUR revocations, which eliminate requirements without imposing any new ones, have no adverse economic impacts. The Agency's generic certification for SNUR revocations appears at 62 FR 29688 (June 2, 1997), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

V. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements.

Dated: June 24, 1997.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.3020 [Removed]

2. By removing § 721.3020.

§ 721.3040 [Removed]

3. By removing § 721.3040.

[FR Doc. 97-17178 Filed 7-1-97; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 721**

[OPPTS-50622D; FRL-5715-2]

RIN 2070-AB27

Aliphatic Ester; Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for aliphatic ester based on a new evaluation of toxicity data. Based on the data the Agency determined that it could no longer support a finding that activities not described in the TSCA section 5(e) consent order may result in significant changes in human exposure.

DATES: This rule is effective August 1, 1997.

FOR FURTHER INFORMATION CONTACT:

Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543A, 401 M St., SW., Washington, DC 20460; telephone: 202-554-1404; TDD: 202-554-0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 30, 1995 (60 FR 45072)(FRL-4629-2) EPA issued a SNUR establishing significant new uses

for aliphatic ester. Because of additional data EPA has received for this substance, EPA is proposing to revoke this SNUR.

I. Background

The Agency proposed the revocation of the SNUR for this substance in the **Federal Register** of February 4, 1997 (62 FR 5196)(FRL-5580-7). The background and reasons for the revocation of the SNUR are set forth in the preamble to the proposed revocation. The Agency received no public comment concerning the proposed revocation. As a result, EPA is revoking this SNUR.

II. Background and Rationale for Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this revocation, EPA concluded that regulation was warranted based on the fact that activities not described in the section 5(e) consent order may result in significant changes in human exposure. Based on these findings, a SNUR was promulgated.

EPA has revoked the section 5(e) consent order that is the basis for this SNUR and determined that it could no longer support a finding that activities not described in the section 5(e) consent order may result in significant changes in human exposure. The proposed revocation of SNUR provisions for this substance designated herein is consistent with this finding.

In light of the above, EPA proposed to revoke the SNUR provisions for this chemical substance. When this revocation becomes final, EPA will no longer require notice of any company's intent to manufacture, import, or process this substance. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Rulemaking Record

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket number OPPTS-50622D (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 confidential business information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC.

IV. Regulatory Assessment

This final rule revokes or eliminates an existing regulatory requirement and does not contain any new or amended requirements. As such, the Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). Since this final rule does not impose any requirements, it does not contain any information collections subject to approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or require any other action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has determined that SNUR revocations, which eliminate requirements without imposing any new ones, have no adverse economic impacts. The Agency's generic certification for SNUR revocations appears at 62 FR 29688 (June 2, 1997), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

V. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements.

Dated: June 24, 1997.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.2815 [Removed]

2. Section 721.2815 is removed.
[FR Doc. 97-17179 Filed 7-1-97; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1002 and 1180

[STB Ex Parte No. 556]

**Railroad Consolidation Procedures—
Modification of Fee Policy: Correction**

AGENCY: Surface Transportation Board (Board).

ACTION: Final rules: correction of effective date.

SUMMARY: The Board is correcting the effective date for the final rules relating to the Board's fee policy for proceedings involving major railroad consolidations, which were published at 62 FR 28375 on May 23, 1997. The corrected effective date appears below.

DATES: The effective date of the final rules published at 62 FR 28375 on May 23, 1997, is corrected from May 15, 1997 to May 5, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, (202) 565-1639 or David T. Groves, (202) 565-1551. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: On March 4, 1997, at 62 FR 9714, the Board published interim rules that modified the Board's user fee policy for proceedings involving major railroad

consolidations under 49 CFR part 1180 and the Board's corresponding fee regulations at 49 CFR part 1002. Subsequently on May 23, 1997, at 62 FR 28375, the Board adopted those interim rules with one minor modification. Because an incorrect effective date was given in the document published on May 23, 1997, the Board is issuing this document to show that the effective date of those rules is corrected to be May 5, 1997.

Decided: June 25, 1997.
By the Board, Vernon A. Williams,
Secretary.

Vernon A. Williams,
Secretary.
[FR Doc. 97-17345 Filed 7-1-97; 8:45 am]
BILLING CODE 4915-00-P

Proposed Rules

Federal Register

Vol. 62, No. 127

Wednesday, July 2, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 880

RIN 3206-AH75

Retirement and Insurance Benefits When an Annuitant Is Missing

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing regulations to establish a uniform standard that OPM will use in its administration of retirement and insurance benefits in cases in which an annuitant disappears. These regulations would establish procedures to determine the status of the missing annuitant and to allow the missing annuitant's dependents to obtain benefits until the missing annuitant's status is resolved.

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

ADDRESSES: Send comments to John E. Landers, Chief, Retirement Policy Division; Retirement and Insurance Service; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606-0299.

SUPPLEMENTARY INFORMATION: These regulations are intended to establish OPM's procedures for making payments of annuity during a period when an annuitant is missing and until the annuitant is either found or officially determined to have died. The regulations are aimed at providing continuing support to the family of a missing annuitant, while balancing the interest of the Government in protecting the retirement system from unwarranted disbursements.

These cases are uncommon, but about once a year a case arises under Civil Service Retirement System (CSRS) or

Federal Employees Retirement System (FERS) in which an annuitant disappears. In some cases, the circumstances of the disappearance are such that local authorities are able to declare the missing annuitant legally dead (e.g., victims of a plane crash with no survivors but bodies are not identifiable) and we are able to begin survivor benefit payments to the affected families, but, in other cases, a long waiting period is required before a missing annuitant can be declared legally dead. However, over the years, our experience has been that such missing individuals are not found alive. Accordingly, the proposed regulations would provide for continuing payment of the amount that would be payable as survivor annuity if the missing annuitant were dead.

Subpart A contains information of a general nature, including a description of the type of case covered by the regulations, cross references to related regulations, and definitions of terms used in the regulations. Section 880.101 limits the scope of these regulations to cases involving the disappearance of individuals who are already retired.

In the case of disappearance of a separated employee who has not applied for annuity, we have no authority to pay an employee annuity, as determined by the United States Court of Appeals for the Federal Circuit in the case of *Oshiver v. Office of Personnel Management*, 896 F.2d 540 (Fed. Cir. 1990). The court found that no payments can be made until the individual personally files an application. Accordingly, section 880.101 excludes from the coverage of the regulations any case in which the former employee has not applied for retirement.

Section 880.102 is a research aid providing references to related regulations.

Section 880.103 defines terms used in this part.

Subpart B establishes the procedures that we will follow in missing annuitant cases. Section 880.202 establishes that the Retirement and Insurance Service is the component of OPM that will receive and act on any missing annuitant report.

Section 880.203 establishes the procedure that OPM will follow to determine that a retiree is missing and assigns to the Retirement and Insurance Service the responsibility for

suspending payment and providing notice to affected individuals. That section also specifies the types of information that the affected individual will receive in the suspension notice.

Section 880.204 provides for retroactive restoration of the annuity and an offset for any disbursements made during the disappearance, in the event that the annuitant is found. That section also provides that we will consider issues of competency of the previously missing annuitant and if necessary require a representative payee be appointed before restoring the annuity.

Section 880.205 establishes the standard of evidence required to prove the death of a missing annuitant before we will authorize any form of lump-sum death benefits under CSRS or FERS or a life insurance payment. Although in routine CSRS and FERS death cases we accept other forms of evidence to establish the death of an annuitant, in missing annuitant cases before paying any lump-sum death benefit or life insurance, we will require documentary evidence that an official with legal authority to make determinations that an individual is legally dead has made such a determination for the missing annuitant. The individual claiming that the missing annuitant is dead has the burden of proving that the official determining death is authorized to make such determinations. We expect that such proof will generally consist of appropriate State or other official documents authorizing the official to make such determinations.

Section 880.206 establishes a uniform date of death for the cases covered by these regulations. This rule is needed to prevent unjustified variations in benefits depending on local law. Under these regulations, the date of disappearance will be used as the date of presumed death.

Section 880.207 establishes that we will review each missing annuitant case after a determination of death to make certain that the proper benefits have been paid and premiums collected consistent with the date of death established under section 880.206.

Subpart C establishes the methodology that we will use to determine benefit levels while the annuitant is missing. Section 880.302 provides for payment of CSRS and FERS survivor annuity as though the missing

annuitant were dead. In the usual missing annuitant case, the effect of this rule is that the spouse will be paid at the survivor rate—55 percent (CSRS) or 50 percent (FERS) of the missing annuitant's benefit. However, if the missing annuitant had children who would be eligible for a survivor annuity, we would make payments at the child annuity rate as well. Also, if a former spouse has been receiving a portion of the annuitant's monthly benefit in accordance with a court order, that payment to the former spouse would be suspended under rules that would normally apply when an annuitant's payments are suspended. See 5 CFR 838.323. If a former spouse would be entitled to the survivor annuity, upon the missing annuitant's death, we will pay the former spouse an amount equal to that survivor annuity.

Section 880.303 establishes that family health benefits coverage continues while the annuitant is missing if there is more than one eligible family member, and that the enrollment is transferred to an eligible family member. If there is only one eligible family member, the enrollment is changed to self only and transferred to that family member. If the missing annuitant has a self-only enrollment, the enrollment terminates. If the missing annuitant is later found to be alive, the original enrollment is reinstated upon the annuitant's reappearance unless the annuitant or his or her representative requests that it be restored retroactively to the time of the disappearance.

Section 880.304 establishes that life insurance premiums will not be collected while the annuitant is missing. If the annuitant is located, back premiums will be collected. If not, the suspension of premiums will be permanent because the annuitant is deemed to have died on the date of disappearance.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement and insurance benefits of retired Government employees and their survivors.

List of Subjects in 5 CFR Part 880

Administrative practice and procedure, Government employees, Health insurance, Hostages, Life insurance, Pensions, Retirement.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend 5 CFR as follows:

1. Part 880 is added to read as follows:

PART 880—RETIREMENT AND INSURANCE BENEFITS DURING PERIODS OF UNEXPLAINED ABSENCE

Subpart A—General

Sec.

- 880.101 Purpose and scope.
- 880.102 Regulatory structure.
- 880.103 Definitions.

Subpart B—Procedures

- 880.201 Purpose and scope.
- 880.202 Referral to Associate Director.
- 880.203 Missing annuitant status and suspension of annuity.
- 880.204 Restoration of annuity.
- 880.205 Determinations of death.
- 880.206 Date of death.
- 880.207 Adjustment of accounts after finding of death.

Subpart C—Continuation of Benefits

- 880.301 Purpose.
- 880.302 Payments of CSRS or FERS benefits.
- 880.303 FEHBP coverage.
- 880.304 FEGLI coverage.

Authority: 5 U.S.C. 8347(a), 8461(g), 8716, 8913.

Subpart A—General

§ 880.101 Purpose and scope.

(a) The purpose of this part is to establish a uniform standard that OPM will use in its administration of benefits for CSRS, FERS, FEHBP and FEGLI in cases in which an annuitant becomes a missing annuitant.

(b) This part establishes the procedures that OPM will follow to—

- (1) Determine—
 - (i) Who is a missing annuitant,
 - (ii) When a missing annuitant has died,
 - (iii) When benefits will be paid in missing annuitant cases, and
 - (iv) FEHBP coverage for family members of a missing annuitant; and
- (2) Make adjustments to CSRS and FERS benefit payments, FEHBP coverage and premiums, and FEGLI benefit payments and premiums after a determination that a missing annuitant is dead.

(c) This part applies only to situations in which an individual who satisfies the statutory definition of an annuitant under section 8331(9) or section 8401(2) of title 5, United States Code, disappears and has not been determined to be dead by an authorized institution. This part does not apply to—

(1) An employee, regardless of whether the absence is covered by subchapter VII of chapter 55 of title 5, United States Code; or

(2) A separated employee who either—

- (i) Does not meet the age and service requirements for an annuity, or
- (ii) Has not filed an application for annuity.

§ 880.102 Regulatory structure.

(a) This part contains the following subparts:

(1) Subpart A contains general information about this part and related subjects.

(2) Subpart B establishes the procedures that OPM will follow in missing annuitant cases.

(3) Subpart C establishes the methodologies that OPM will apply in determining continuations of coverage and amounts of payments in missing annuitant cases.

(b) Part 831 of this chapter contains information about benefits under CSRS.

(c) Part 838 of this chapter contains information about benefits available to former spouses under court orders.

(d) Parts 841 through 844 of this chapter contain information about benefits under FERS.

(e) Parts 870 through 873 of this chapter contain information about benefits under FEGLI.

(f) Part 890 of this chapter contains information about benefits under FEHBP.

(g) Part 1200 of this title contains information about Merit Systems Protection Board review of OPM decisions affecting interests in CSRS or FERS benefits.

(h) Part 1600 of this title contains information about benefits under the Thrift Savings Plan.

§ 880.103 Definitions.

For purposes of this part—

Annuitant means an individual who has separated from the Federal service with, and has retained, title to a CSRS or FERS annuity, has satisfied the age and service requirements for commencement of that annuity, and has filed an application for that annuity.

Associate Director means OPM's Associate Director for Retirement and Insurance or his or her designee;

Authorized institution means a government organization or official legally charged with making determinations of death in the State or country of the missing annuitant's domicile, citizenship, or disappearance;

CSRS means the Civil Service Retirement System established in subchapter III of chapter 83 of title 5, United States Code;

FEGLI means the Federal Employees Group Life Insurance program established in chapter 87 of title 5, United States Code;

FEHBP means the Federal Employees Health Benefits Program established in chapter 89 of title 5, United States Code;

FERS means the basic benefit portion of the Federal Employees Retirement System established in subchapters I, II, IV, V, and VI of chapter 84 of title 5, United States Code; *FERS* does not include benefits under the Thrift Savings Plan established under subchapters III and VII of chapter 84 of title 5, United States Code;

Missing annuitant means: an individual who has acquired the status of missing annuitant under § 880.203(b).

Subpart B—Procedures

§ 880.201 Purpose and scope.

This subpart establishes the procedures that OPM will use to—

- (a) Determine that an individual is a missing annuitant;
- (b) Suspend payment of annuity to a missing annuitant;
- (c) Notify individuals affected by such a suspension of payments; and
- (d) Determine that a missing annuitant has died.

§ 880.202 Referral to Associate Director.

Any OPM office that receives information concerning the possibility that an annuitant might have disappeared will notify the Associate Director.

§ 880.203 Missing annuitant status and suspension of annuity.

(a) Upon receipt of information concerning the possibility that an annuitant has disappeared, the Associate Director will conduct such inquiry as he or she determines to be necessary to determine whether the annuitant is alive and whether the annuitant's whereabouts can be determined.

(b) If during an inquiry under paragraph (a) of this section, or upon subsequent receipt of additional information, the Associate Director finds substantial evidence (as defined in § 1201.56(c)(1) of this title) to believe that an annuitant is either not alive or that the annuitant's whereabouts cannot be determined, the annuitant acquires the status of missing annuitant. The Associate Director will then—

- (1) Suspend payments to the missing annuitant; and
- (2) Notify individuals who may be able to qualify for payments under § 880.302 that—
 - (i) OPM has suspended the annuity payments to the missing annuitant;

(ii) Payment may be made under § 880.302, including the amount available for payment, how that amount was determined, and the documentation required (if any) to qualify for such payments; and

(iii) In response to an inquiry from any person seeking CSRS, FERS, FEHBP, or FEGLI benefits, OPM will provide information about documentation necessary to establish a claim for such benefits.

§ 880.204 Restoration of annuity.

(a) If the missing annuitant's whereabouts are determined, and he or she is alive and—

(1) Competent, OPM will resume payments to the annuitant and pay retroactive annuity for the period in missing status less any payment made to the family during that period; or

(2) Incompetent, OPM will resume payments to a representative payee under section 8345(e) or section 8466(c) of title 5, United States Code, and pay retroactive annuity for the period in missing status less any payment made to the family during that period.

(b) If the missing annuitant's whereabouts cannot be determined, missing annuitant status continues until an authorized institution determines that the missing annuitant is dead. (See § 880.205).

§ 880.205 Determinations of death.

OPM does not make findings of presumed death. A claimant for CSRS, FERS, or FEGLI death benefits (other than payments under § 880.302) or an individual seeking an adjustment of accounts under § 880.207 must submit a death certificate or other legal certification of death issued by an authorized institution.

§ 880.206 Date of death.

(a) Except as provided in paragraph (b) of this section, for the purpose of benefits administered by OPM, the date of death of a missing annuitant who has been determined to be dead by an authorized institution is the date of disappearance as determined by the Associate Director.

(b) For the purpose of determining whether a claim is untimely under any statute of limitations applicable to CSRS, FERS or FEGLI benefits (section 8345(i)(2), section 8466(b), or section 8705(b) through (d) of title 5, United States Code), the time between the date of disappearance and the date on which the authorized institution issues its decision that the missing annuitant is dead is excluded.

§ 880.207 Adjustment of accounts after finding of death.

After a missing annuitant is determined to be dead under § 880.205, OPM will review the case to determine whether additional benefits are payable or excess insurance premiums have been withheld.

Subpart C—Continuation of Benefits

§ 880.301 Purpose.

This subpart establishes OPM's policy concerning the availability and amount of CSRS and FERS annuity payments and the continuation of FEHBP and FEGLI coverage and premiums while an annuitant is classified as a missing annuitant.

§ 880.302 Payments of CSRS or FERS benefits.

(a) OPM will pay an amount equal to the survivor annuity that would be payable as CSRS or FERS survivor annuity to an account in a financial institution designated (under electronic funds transfer regulations in part 209 or part 210 of Title 31, Code of Federal Regulations) by an individual who, if the missing annuitant were dead, would be entitled to receive payment of a survivor annuity.

(b) If more than one individual would qualify for survivor annuity payments in the event of the missing annuitant's death, OPM will make separate payments in the same manner as if the missing annuitant were dead.

§ 880.303 FEHBP coverage.

(a) If the missing annuitant had a family enrollment, the enrollment will be transferred to the eligible family members under § 890.303(c) of this chapter. If there is only one eligible family member, the enrollment will be changed to a self-only enrollment under § 890.301(p) of this chapter. The changes will be effective the first day of the pay period following the date of disappearance.

(b) If the missing annuitant was covered by a self only enrollment or if there is no eligible family member remaining, the enrollment terminates at midnight of the last day of the pay period in which he or she disappeared, subject to the temporary extension of coverage for conversion.

(c) If the missing annuitant is found to be alive, the coverage held before the disappearance is reinstated effective with the pay period during which the annuitant is found, unless the annuitant, or the annuitant's representative, requests that the enrollment be restored retroactively to the pay period in which the disappearance occurred.

§ 880.304 FEGLI coverage.

(a) FEGLI premiums will not be collected during periods when an annuitant is a missing annuitant.

(b)(1) If the annuity of a missing annuitant is restored under § 880.204(a), OPM will deduct the amount of FEGLI premiums attributable to the period when the annuitant was a missing annuitant from any adjustment payment due the annuitant under § 880.204(a).

(2) If a missing annuitant is determined to be dead under § 880.205, FEGLI premiums and benefits will be computed using the date of death established under § 880.206(a).

[FR Doc. 97-17231 Filed 7-1-97; 8:45 am]

BILLING CODE 6325-01-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 97-CE-22-AD]

RIN 2120-AA64

Airworthiness Directives; Mitsubishi Heavy Industries MU-2B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Mitsubishi Heavy Industry (Mitsubishi) MU-2B series airplanes. The proposed AD would require amending the Limitations Section of the airplane flight manual (AFM) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight. This amendment would include a statement of consequences if the limitation is not followed. The proposed AD is a result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. The actions specified by the proposed AD are intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region,

Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-CE-22-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Information related to the proposed AD may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: William Schinstock, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone (316) 946-4162; facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire.

Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97-CE-22-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-CE-22-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of 14 occurrences in recent years of incidents

or accidents on airplanes equipped with turboprop engines related to intentional or inadvertent operation of the propellers in the beta range during flight. Beta is the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.

Of the 14 documented in-flight beta occurrences, five were classified as accidents. In-flight beta operation results that preceded the accidents can be classified in one of two categories: (1) Permanent engine damage and total loss of thrust on all engines when the propeller that was operating in the beta range drove the engines to overspeed; and (2) loss of airplane control because at least one propeller operated in the beta range during flight.

The most recent accident occurred when both engines of a Saab Model 340B permanently lost power after eight seconds of beta range propeller operation. The propellers consequently drove the engines into overspeed, which resulted in internal engine failure.

Communication between the FAA and the public during a meeting held on June 11-12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the airplane flight manual (AFM) for airplanes not certificated for in-flight operation with the power levers below the flight idle stop. Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents and accidents referenced above, the FAA has determined that:

- All airplanes equipped with turboprop engines (provided the airplane is not certificated for in-flight operation with the power levers below the flight idle stop) should have information in the Limitations Section of the AFM that prohibits positioning of power levers below the flight idle stop while the airplane is in flight, including a statement of consequence if the limitation is not followed; and

- Because Mitsubishi Models MU-2B, MU-2B-10, MU-2B-15, MU-2B-20, MU-2B-25, MU-2B-26, MU-2B-30, MU-2B-35, MU-2B-36, MU-2B-36A, MU-2B-40, and MU-2B-60 airplanes are equipped with turboprop engines, are not certificated for in-flight operation with the power levers below the flight idle stop, and do not contain information in the Limitations Section

of the AFM that prohibits and explains the consequences of such operation, AD action should be taken. The proposed AD is intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Mitsubishi MU-2B series (Models previously referenced) airplanes of the same type design, the proposed AD would require amending the Limitations Section of the AFM to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, including a statement of consequences if the limitation is not followed. This AFM amendment shall consist of the following language:

Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

Compliance Time of the Proposed AD

The FAA has determined that the compliance time of the proposed AD should be specified in calendar time instead of hours time-in-service. While the condition addressed by the proposed AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The proposed compliance time of "30 days after the effective date of this AD" would not inadvertently ground airplanes and would assure that all owners/operators of the affected airplanes accomplish the proposed action in a reasonable time period.

Cost Impact

The FAA estimates that 437 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to incorporate the proposed AFM amendment, and that the average labor rate is approximately \$60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by §§ 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the

affected airplane owner/operators to amend the AFM.

Regulatory Impact

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

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

ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Mitsubishi Heavy Industries: Docket No. 97-CE-22-AD.

Applicability: Models MU-2B, MU-2B-10, MU-2B-15, MU-2B-20, MU-2B-25, MU-2B-26, MU-2B-30, MU-2B-35, MU-2B-36, MU-2B-36A, MU-2B-40, and MU-2B-60 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability

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

Compliance: Required within the next 30 days after the effective date of this AD, unless already accomplished.

To prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Amend the Limitations Section of the airplane flight manual (AFM) by inserting the following language:

"Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power."

(b) This action may be accomplished by incorporating a copy of this AD into the Limitations Section of the AFM.

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

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

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

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

(f) Information related to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on June 25, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-17257 Filed 7-1-97; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-CE-25-AD]

RIN 2120-AA64

Airworthiness Directives; Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A. Model P-180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A. (Piaggio) Model P-180 airplanes. The proposed AD would require amending the Limitations Section of the airplane flight manual (AFM) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight. This amendment would include a statement of consequences if the limitation is not followed. The proposed AD is a result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. The actions specified by the proposed AD are intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-CE-25-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Information related to the proposed AD may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: J. Mike Kiesov, Aerospace Engineer,

Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426-6934; facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97-CE-25-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-CE-25-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of 14 occurrences in recent years of incidents or accidents on airplanes equipped with turboprop engines related to intentional or inadvertent operation of the propellers in the beta range during flight. Beta is the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.

Of the 14 documented in-flight beta occurrences, five were classified as accidents. In-flight beta operation results that preceded the accidents can

be classified in one of two categories: (1) Permanent engine damage and total loss of thrust on all engines when the propeller that was operating in the beta range drove the engines to overspeed; and (2) loss of airplane control because at least one propeller operated in the beta range during flight.

The most recent accident occurred when both engines of a Saab Model 340B permanently lost power after eight seconds of beta range propeller operation. The propellers consequently drove the engines into overspeed, which resulted in internal engine failure.

Communication between the FAA and the public during a meeting held on June 11-12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the airplane flight manual (AFM) for airplanes not certificated for in-flight operation with the power levers below the flight idle stop. Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents and accidents referenced above, the FAA has determined that:

- All airplanes equipped with turboprop engines (provided the airplane is not certificated for in-flight operation with the power levers below the flight idle stop) should have information in the Limitations Section of the AFM that prohibits positioning of power levers below the flight idle stop while the airplane is in flight, including a statement of consequence if the limitation is not followed; and

- Because Piaggio Model P-180 airplanes are equipped with turboprop engines, are not certificated for in-flight operation with the power levers below the flight idle stop, and do not contain information in the Limitations Section of the AFM that prohibits and explains the consequences of such operation, AD action should be taken. The proposed AD is intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Piaggio Model P-180 airplanes of the same type design, the proposed AD would require amending

the Limitations Section of the AFM to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, including a statement of consequences if the limitation is not followed. This AFM amendment shall consist of the following language:

Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

Possible Alternative to the Proposed AD

Piaggio is determining whether it will develop AFM revisions for the affected airplanes. If Piaggio does develop AFM revisions and they are completed and approved by the FAA prior to issuance of the final rule, then incorporating these revisions into the AFM will be included as a method of complying with the AD.

Compliance Time of the Proposed AD

The FAA has determined that the compliance time of the proposed AD should be specified in calendar time instead of hours time-in-service. While the condition addressed by the proposed AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The proposed compliance time of "30 days after the effective date of this AD" would not inadvertently ground airplanes and would assure that all owners/operators of the affected airplanes accomplish the proposed action in a reasonable time period.

Cost Impact

The FAA estimates that 4 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to incorporate the proposed AFM amendment, and that the average labor rate is approximately \$60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owner/operators to amend the AFM.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Industrie Aeronautiche E Meccaniche

Rinaldo Piaggio S.P.A.: Docket No. 97-CE-25-AD.

Applicability: Model P-180 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of

the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 30 days after the effective date of this AD, unless already accomplished.

To prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Amend the Limitations Section of the airplane flight manual (AFM) by inserting the following language:

"Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power."

(b) This action may be accomplished by incorporating a copy of this AD into the Limitations Section of the AFM.

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

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) Information related to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on June 25, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-17256 Filed 7-1-97; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 97-CE-18-AD]

RIN 2120-AA64

Airworthiness Directives; Pilatus Aircraft LTD Models PC-6/B1-H2, PC-6/B2-H2, PC-6/B2-H4, and PC-12 Airplanes**AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Aircraft LTD (Pilatus) Models PC-6/B1-H2, PC-6/B2-H2, PC-6/B2-H4 airplanes and all Pilatus Model PC-12 airplanes. The proposed AD would require amending the Limitations Section of either the airplane flight manual (AFM) of the pilot's operating handbook (POH) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight. This amendment would include a statement of consequences if the limitation is not followed. The proposed AD is a result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. The actions specified by the proposed AD are intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-CE-18-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

The AFM revisions referenced in this AD may be obtained from Pilatus Aircraft Ltd., CH-6370 Stans, Switzerland. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: J. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri

64106; telephone (816) 426-6934; facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION:**Comments Invited**

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97-CE-18-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-CE-18-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of 14 occurrences in recent years of incidents or accidents on airplanes equipped with turboprop engines related to intentional or inadvertent operation of the propellers in the beta range during flight. Beta is the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.

Of the 14 documented in-flight beta occurrences, five were classified as accidents. In-flight beta operation results that preceded the accidents can be classified in one of two categories: (1) Permanent engine damage and total loss

of thrust on all engines when the propeller that was operating in the beta range drove the engines to overspeed; and (2) loss of airplane control because at least one propeller operated in the beta range during flight.

The most recent accident occurred when both engines of a Saab Model 340B permanently lost power after eight seconds of beta range propeller operation. The propellers consequently drove the engines into overspeed, which resulted in internal engine failure.

Communication between the FAA and the public during a meeting held on June 11-12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the airplane flight manual (AFM) for airplanes not certificated for in-flight operation with the power levers below the flight idle stop. Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.

Applicable Service Information

Pilatus has issued the following revisions to the affected airplanes' AFM or POH:

- Temporary Revision To Pilatus/PC-6 B1 and B2 Series Airplanes Flight Manuals; Section 1; Certificate Limitations; Issued: November 29, 1996; and
- Temporary Revision To PC-12 Pilot's Operating Handbook; Pilatus Report No. 01973-001, dated November 20, 1996.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents and accidents referenced above, including the temporary revisions to the AFM or POH, the FAA has determined that:

- All airplanes equipped with turboprop engines (provided the airplane is not certificated for in-flight operation with the power levers below the flight idle stop) should have information in the Limitations Section of the AFM that prohibits positioning of power levers below the flight idle stop while the airplane is in flight, including a statement of consequence if the limitation is not followed; and
- Because Pilatus Models PC-6/B1-H2, PC-6/B2-H2, PC-6/B2-H4 airplanes that are equipped with a Pratt and Whitney PT6A turboprop engine and Pilatus Model PC-12 airplanes equipped with turboprop engines are not certificated for in-flight operation with the power levers below the flight idle stop, and do not contain information in the Limitations Section

of the AFM or POH that prohibits and explains the consequences of such operation, AD action should be taken. The proposed AD is intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Models PC-6/B1-H2, PC-6/B2-H2, PC-6/B2-H4 airplanes and PC-12 series airplanes of the same type design, the proposed AD would require amending the Limitations Section of the AFM or POH to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, including a statement of consequences if the limitation is not followed. Amending the AFM or POH would be accomplished by inserting the Temporary AFM or POH revisions previously referenced.

Compliance Time of the Proposed AD

The FAA has determined that the compliance time of the proposed AD should be specified in calendar time instead of hours time-in-service. While the condition addressed by the proposed AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The proposed compliance time of "30 days after the effective date of this AD" would not inadvertently ground airplanes and would assure that all owners/operators of the affected airplanes accomplish the proposed action in a reasonable time period.

Cost Impact

The FAA estimates that 72 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to incorporate the proposed AFM amendment, and that the average labor rate is approximately \$60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owner/operators to amend the AFM or POH.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pilatus Aircraft Ltd: Docket No. 97-CE-18-AD.

Applicability: The following model and serial number airplanes, certificated in any category:

- Model Pilatus Models PC-6/B1-H2, PC-6/B2-H2, PC-6/B2-H4 airplanes, all serial numbers, that are equipped with a Pratt and Whitney PT6A turboprop engine.
- Model Pilatus PC-12 airplanes, all serial numbers.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been

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

Compliance: Required within the next 30 days after the effective date of this AD, unless already accomplished.

To prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Amend the Limitations Section of the airplane flight manual (AFM) or pilot's operating handbook (POH) by inserting the following revisions, as applicable:

(1) Temporary Revision To Pilatus/PC-6 B1 and B2 Series Airplanes Flight Manuals; Section 1; Certificate Limitations; Issued: November 29, 1996;

(2) Temporary Revision To PC-12 Pilot's Operating Handbook; Pilatus Report No. 01973-001, dated November 20, 1996.

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

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) The AFM or POH revisions referenced in this AD may be obtained from Pilatus Aircraft Ltd., CH-6370 Stans, Switzerland. Information related to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on June 25, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-17258 Filed 7-1-97; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-CE-24-AD]

RIN 2120-AA64

Airworthiness Directives; Partenavia Costruzioni Aeronautiche, S.p.A. Models AP68TP 300 "Spartacus" and AP68TP 600 "Viator" Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Partenavia Costruzioni Aeronautiche, S.p.A. (Partenavia) Models AP68TP 300 "Spartacus" and AP68TP 600 "Viator" airplanes. The proposed AD would require amending the Limitations Section of the airplane flight manual (AFM) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight. This amendment would include a statement of consequences if the limitation is not followed. The proposed AD is a result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. The actions specified by the proposed AD are intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-CE-24-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Information related to the proposed AD may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: J. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426-6934; facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97-CE-24-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-CE-24-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of 14 occurrences in recent years of incidents or accidents on airplanes equipped with turboprop engines related to intentional or inadvertent operation of the propellers in the beta range during flight. Beta is the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.

Of the 14 documented in-flight beta occurrences, five were classified as

accidents. In-flight beta operation results that preceded the accidents can be classified in one of two categories: (1) Permanent engine damage and total loss of thrust on all engines when the propeller that was operating in the beta range drove the engines to overspeed; and (2) loss of airplane control because at least one propeller operated in the beta range during flight.

The most recent accident occurred when both engines of a Saab Model 340B permanently lost power after eight seconds of beta range propeller operation. The propellers consequently drove the engines into overspeed, which resulted in internal engine failure.

Communication between the FAA and the public during a meeting held on June 11-12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the airplane flight manual (AFM) for airplanes not certificated for in-flight operation with the power levers below the flight idle stop. Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents and accidents referenced above, the FAA has determined that:

- All airplanes equipped with turboprop engines (provided the airplane is not certificated for in-flight operation with the power levers below the flight idle stop) should have information in the Limitations Section of the AFM that prohibits positioning of power levers below the flight idle stop while the airplane is in flight, including a statement of consequence if the limitation is not followed; and
- Because Partenavia Models AP68TP 300 "Spartacus" and AP68TP 600 "Viator" airplanes are equipped with turboprop engines, are not certificated for in-flight operation with the power levers below the flight idle stop, and do not contain information in the Limitations Section of the AFM that prohibits and explains the consequences of such operation, AD action should be taken. The proposed AD is intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or

develop in Partenavia Models AP68TP 300 "Spartacus" and AP68TP 600 "Viator" airplanes of the same type design, the proposed AD would require amending the Limitations Section of the AFM to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, including a statement of consequences if the limitation is not followed. This AFM amendment shall consist of the following language:

Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

Possible Alternative to the Proposed AD

Partenavia is determining whether it will develop AFM revisions for the affected airplanes. If Partenavia does develop AFM revisions and they are completed and approved by the FAA prior to issuance of the final rule, then incorporating these revisions into the AFM will be included as a method of complying with the AD.

Compliance Time of the Proposed AD

The FAA has determined that the compliance time of the proposed AD should be specified in calendar time instead of hours time-in-service. While the condition addressed by the proposed AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The proposed compliance time of "30 days after the effective date of this AD" would not inadvertently ground airplanes and would assure that all owners/operators of the affected airplanes accomplish the proposed action in a reasonable time period.

Cost Impact

The FAA estimates that 5 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to incorporate the proposed AFM amendment, and that the average labor rate is approximately \$60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owner/operators to amend the AFM.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Partenavia Costruzioni Aeronauticas, S.P.A.:
Docket No. 97-CE-24-AD.

Applicability: Models AP68TP 300 "Spartacus" and AP68TP 600 "Viator" airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an

alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 30 days after the effective date of this AD, unless already accomplished.

To prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Amend the Limitations Section of the airplane flight manual (AFM) by inserting the following language:

"Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power."

(b) This action may be accomplished by incorporating a copy of this AD into the Limitations Section of the AFM.

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

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) Information related to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on June 25, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-17259 Filed 7-1-97; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 97-CE-20-AD]

RIN 2120-AA64

Airworthiness Directives; Raytheon Aircraft Company 65, 90, 99, 100, 200, 300, 1900, and 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Raytheon Aircraft Company (Raytheon) 65, 90, 99, 100, 200, 300, 1900, and 2000 series airplanes. The proposed action would require amending the Limitations Section of the airplane flight manual (AFM) to prohibit positioning the power levers below the flight idle stop or lifting the power levers while the airplane is in flight. This amendment would include a statement of consequences if the limitations are not followed. The proposed AD is a result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. The actions specified by the proposed AD are intended to prevent nose down pitch and a descent rate leading to aircraft damage and injury to personnel caused by the power levers being positioned below the flight idle stop or the power levers being lifted while the airplane is in flight.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-CE-20-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Information related to the proposed AD may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: William Schinstock, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone (316) 946-4162; facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION:**Comments Invited**

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97-CE-20-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-CE-20-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of 14 occurrences in recent years of incidents or accidents on airplanes equipped with turboprop engines related to intentional or inadvertent operation of the propellers in the beta range during flight. Beta is the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.

Of the 14 documented in-flight beta occurrences, five were classified as accidents. In-flight beta operation results that preceded the accidents can be classified in one of two categories: (1) Permanent engine damage and total loss of thrust on all engines when the propeller that was operating in the beta

range drove the engines to overspeed; and (2) loss of airplane control because at least one propeller operated in the beta range during flight.

The most recent accident occurred when both engines of a Saab Model 340B permanently lost power after eight seconds of beta range propeller operation. The propellers subsequently drove the engines into overspeed, which resulted in internal engine failure.

Communication between the FAA and the public during a meeting held on June 11-12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the airplane flight manual (AFM) for airplanes not certificated for in-flight operation with the power levers below the flight idle stop. Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents and accidents referenced above, the FAA has determined that:

- All airplanes equipped with turboprop engines (provided the airplane is not certificated for in-flight operation with the power levers below the flight idle stop) should have information in the Limitations Section of the AFM that prohibits positioning the power levers below the flight idle stop or lifting the power levers while the airplane is in flight; and
- Because Raytheon Models 65-90, 65-A90, 65-A90-1, 65-A90-3, 65-A90-4, B90, C90, C90(SE), C90A, C90B, E90, F90, H90, 99, 99A, A99, A99A, B99, C99, 100, A100, A100A, A100C, B100, 200, 200C, 200CT, 200T, A200, A200C, A200CT, B200, B200C, B200T, B200CT, 300, B300, B300C, 1900, 1900C, 1900D, and 2000 airplanes are equipped with turboprop engines, are not certificated for in-flight operation with the power levers below the flight idle stop, and do not contain information in the Limitations Section of the AFM that explains the consequences of such operation, AD action should be taken. The proposed AD is intended to prevent nose down pitch and a descent rate leading to aircraft damage and injury to personnel caused by the power levers being positioned below the flight idle stop or the power levers being lifted while the airplane is in flight.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or

develop in other Raytheon airplanes (Models previously referenced) airplanes of the same type design, the proposed AD would require amending the Limitations Section of the AFM to prohibit positioning the power levers below the flight idle stop or lifting the power levers while the airplane is in flight, including a statement of consequences if the limitations are not followed. This AFM amendment shall consist of the following language:

Do not lift the power levers in flight. Lifting the power levers in flight or moving the power levers in flight below the flight idle position could result in nose down pitch and a descent rate leading to aircraft damage and injury to personnel.

Possible Alternative to the Proposed AD

Raytheon is currently in the process of developing AFM revisions for the affected airplanes. If these AFM revisions are completed and approved by the FAA prior to issuance of the final rule, then incorporating these revisions into the AFM will be included as a method of complying with the AD.

Compliance Time of the Proposed AD

The FAA has determined that the compliance time of the proposed AD should be specified in calendar time instead of hours time-in-service. While the condition addressed by the proposed AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The proposed compliance time of "30 days after the effective date of this AD" would not inadvertently ground airplanes and would assure that all owners/operators of the affected airplanes accomplish the proposed action in a reasonable time period.

Cost Impact

The FAA estimates that 3,093 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to incorporate the proposed AFM amendment, and that the average labor rate is approximately \$60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owner/operators to amend the AFM.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Raytheon Aircraft Company: Docket No. 97-CE-20-AD.

Applicability: Models 65-90, 65-A90, 65-A90-1, 65-A90-3, 65-A90-4, B90, C90, C90(SE), C90A, C90B, E90, F90, H90, 99, 99A, A99, A99A, B99, C99, 100, A100, A100A, A100C, B100, 200, 200C, 200CT, 200T, A200, A200C, A200CT, B200, B200C, B200T, B200CT, 300, B300, B300C, 1900, 1900C, 1900D, and 2000 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area

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

Compliance: Required within the next 30 days after the effective date of this AD, unless already accomplished.

To prevent nose down pitch and a descent rate leading to aircraft damage and injury to personnel caused by the power levers being positioned below the flight idle stop or the power levers being lifted while the airplane is in flight, accomplish the following:

(a) Amend the Limitations Section of the airplane flight manual (AFM) by inserting the following language:

"Do not lift the power lever in flight. Lifting the power levers in flight or moving the power levers in flight below the flight idle position could result in nose down pitch and a descent rate leading to aircraft damage and injury to personnel."

(b) This action may be accomplished by incorporating a copy of this AD into the Limitations Section of the AFM.

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

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

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

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

(f) Information related to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on June 25, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-17264 Filed 7-1-97; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 97-CE-23-AD]

RIN 2120-AA64

Airworthiness Directives; Dornier Luftfahrt GMBH Models 228-100, 228-101, 228-200, 228-201, 228-202, and 228-212 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Dornier Luftfahrt GMBH (Dornier) Models 228-100, 228-101, 228-200, 228-201, 228-202, and 228-212 airplanes. The proposed AD would require amending the Limitations Section of the airplane flight manual (AFM) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight. This amendment would include a statement of consequences if the limitation is not followed. The proposed AD is a result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. The actions specified by the proposed AD are intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-CE-23-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Information related to the proposed AD may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT:

J. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426-6934; facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of the

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97-CE-23-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-CE-23-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of 14 occurrences in recent years of incidents or accidents on airplanes equipped with turboprop engines related to intentional or inadvertent operation of the propellers in the beta range during flight. Beta is the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.

Of the 14 documented in-flight beta occurrences, five were classified as accidents. In-flight beta operation results that preceded the accidents can be classified in one of two categories: (1) Permanent engine damage and total loss of thrust on all engines when the propeller that was operating in the beta range drove the engines to overspeed; and (2) loss of airplane control because at least one propeller operated in the beta range during flight.

The most recent accident occurred when both engines of a Saab Model

340B permanently lost power after eight seconds of beta range propeller operation. The propellers consequently drove the engines into overspeed, which resulted in internal engine failure.

Communication between the FAA and the public during a meeting held on June 11-12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the airplane flight manual (AFM) for airplanes not certificated for in-flight operation with the power levers below the flight idle stop. Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents and accidents referenced above, the FAA has determined that:

- All airplanes equipped with turboprop engines (provided the airplane is not certificated for in-flight operation with the power levers below the flight idle stop) should have information in the Limitations Section of the AFM that prohibits positioning of power levers below the flight idle stop while the airplane is in flight, including a statement of consequence if the limitation is not followed; and

- Because Dornier Models 228-100, 228-101, 228-200, 228-201, 228-202, and 228-212 airplanes are equipped with turboprop engines, are not certificated for in-flight operation with the power levers below the flight idle stop, and do not contain information in the Limitations Section of the AFM that prohibits and explains the consequences of such operation, AD action should be taken. The proposed AD is intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Dornier Models 228-100, 228-101, 228-200, 228-201, 228-202, and 228-212 airplanes of the same type design, the proposed AD would require amending the Limitations Section of the AFM to prohibit the positioning of the power levers below the flight idle stop while the airplane is

in flight, including a statement of consequences if the limitation is not followed. This AFM amendment shall consist of the following language:

Power levers selection below the flight idle (FI) gate is prohibited during flight.

Movement of any power lever below the FI gate during flight could lead to loss of airplane control from which recovery may not be possible.

Possible Alternative to the Proposed AD

Dornier is currently in the process of developing AFM revisions for the affected airplanes. If these AFM revisions are completed and approved by the FAA prior to issuance of the final rule, then incorporating these revisions into the AFM will be included as a method of complying with the AD.

Compliance Time of the Proposed AD

The FAA has determined that the compliance time of the proposed AD should be specified in calendar time instead of hours time-in-service. While the condition addressed by the proposed AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The proposed compliance time of "30 days after the effective date of this AD" would not inadvertently ground airplanes and would assure that all owners/operators of the affected airplanes accomplish the proposed action in a reasonable time period.

Cost Impact

The FAA estimates that 12 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to incorporate the proposed AFM amendment, and that the average labor rate is approximately \$60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by §§ 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owner/operators to amend the AFM.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the

various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dornier Luftfahrt GMBH: Docket No. 97-CE-23-AD.

Applicability: Models 228-100, 228-101, 228-200, 228-201, 228-202, and 228-212 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of

the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 30 days after the effective date of this AD, unless already accomplished.

To prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Amend the Limitations Section of the airplane flight manual (AFM) by inserting the following language:

"Power levers selection below the flight idle (FI) gate is prohibited during flight. Movement of any power lever below the FI gate during flight could lead to loss of airplane control from which recovery may not be possible."

(b) This action may be accomplished by incorporating a copy of this AD into the Limitations Section of the AFM.

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

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) Information related to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on June 25, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-17263 Filed 7-1-97; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 97-CE-19-AD]

RIN 2120-AA64

Airworthiness Directives; Cessna Aircraft Company Models 208, 208A, 208B, 425, and 441 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Cessna Aircraft Company (Cessna) Models 208, 208A, 208B, 425, and 441 airplanes. The proposed AD would require amending the Limitations Section of the airplane flight manual (AFM) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight. This amendment would include a statement of consequences if the limitation is not followed. The proposed AD is a result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. The actions specified by the proposed AD are intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-CE-19-AD, Room 1558, 601 E. 12th Street, Kansas City, MO 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Information related to the proposed AD may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: William Schinstock, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, KS 67209; telephone (316) 946-4162; facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of the

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97-CE-19-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-CE-19-AD, Room 1558, 601 E. 12th Street, Kansas City, MO 64106.

Discussion

The FAA has received reports of 14 occurrences in recent years of incidents or accidents on airplanes equipped with turboprop engines related to intentional or inadvertent operation of the propellers in the beta range during flight. Beta is the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.

Of the 14 documented in-flight beta occurrences, five were classified as accidents. In-flight beta operation results that preceded the accidents can be classified in one of two categories: (1) Permanent engine damage and total loss of thrust on all engines when the propeller that was operating in the beta range drove the engines to overspeed; and (2) loss of airplane control because at least one propeller operated in the beta range during flight.

The most recent accident occurred when both engines of a Saab Model 340B permanently lost power after eight seconds of beta range propeller operation.

The propellers consequently drove the engines into overspeed, which resulted in internal engine failure.

Communication between the FAA and the public during a meeting held on June 11-12, 1996, in Seattle, WA, revealed a lack of consistency of the information on in-flight beta operation contained in the airplane flight manual (AFM) for airplanes not certificated for in-flight operation with the power levers below the flight idle stop. Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents and accidents referenced above, the FAA has determined that:

- All airplanes equipped with turboprop engines (provided the airplane is not certificated for in-flight operation with the power levers below the flight idle stop) should have information in the Limitations Section of the AFM that prohibits positioning of power levers below the flight idle stop while the airplane is in flight, including a statement of consequence if the limitation is not followed; and

- Because Cessna Models 208, 208A, 208B, 425, and 441 airplanes are equipped with turboprop engines, are not certificated for in-flight operation with the power levers below the flight idle stop, and do not contain information in the Limitations Section of the AFM that prohibits and explains the consequences of such operation, AD action should be taken. The proposed AD is intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Cessna Models 208, 208A, 208B, 425, and 441 airplanes of the same type design, the proposed AD would require amending the Limitations Section of the AFM to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, including a statement of consequences if the limitation is not

followed. This AFM amendment shall consist of the following language:

Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

Compliance Time of the Proposed AD

The FAA has determined that the compliance time of the proposed AD should be specified in calendar time instead of hours time-in-service. While the condition addressed by the proposed AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The proposed compliance time of "30 days after the effective date of this AD" would not inadvertently ground airplanes and would assure that all owners/operators of the affected airplanes accomplish the proposed action in a reasonable time period.

Cost Impact

The FAA estimates that 854 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to incorporate the proposed AFM amendment, and that the average labor rate is approximately \$60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owner/operators to amend the AFM.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the rules docket. A copy of it may be obtained by contacting the rules docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Cessna Aircraft Company: Docket No. 97-CE-19-AD.

Applicability: Models 208, 208A, 208B, 425, and 441 airplanes, all serial numbers, certificated in any category.

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

Compliance: Required within the next 30 days after the effective date of this AD, unless already accomplished.

To prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Amend the Limitations Section of the airplane flight manual (AFM) by inserting the following language:

"Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power."

(b) This action may be accomplished by incorporating a copy of this AD into the Limitations Section of the AFM.

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

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

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

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

(f) Information related to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on June 25, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-17261 Filed 7-1-97; 8:45 am]

BILLING CODE 4910-13-O

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-CE-26-AD]

RIN 2120-AA64

Airworthiness Directives; SIAI Marchetti S.r.l. Models SF600 and SF600A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all SIAI Marchetti S.r.l. Models SF600 and SF600A airplanes. The proposed AD would require amending the Limitations Section of the airplane flight manual (AFM) to prohibit the positioning of the power levers below the flight idle stop

while the airplane is in flight. This amendment would include a statement of consequences if the limitation is not followed. The proposed AD is a result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. The actions specified by the proposed AD are intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-CE-26-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Information related to the proposed AD may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: J. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426-6934; facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97-CE-26-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-CE-26-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of 14 occurrences in recent years of incidents or accidents on airplanes equipped with turboprop engines related to intentional or inadvertent operation of the propellers in the beta range during flight. Beta is the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.

Of the 14 documented in-flight beta occurrences, five were classified as accidents. In-flight beta operation results that preceded the accidents can be classified in one of two categories: (1) Permanent engine damage and total loss of thrust on all engines when the propeller that was operating in the beta range drove the engines to overspeed; and (2) loss of airplane control because at least one propeller operated in the beta range during flight.

The most recent accident occurred when both engines of a Saab Model 340B permanently lost power after eight seconds of beta range propeller operation. The propellers consequently drove the engines into overspeed, which resulted in internal engine failure.

Communication between the FAA and the public during a meeting held on June 11-12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the airplane flight manual (AFM) for airplanes not certificated for in-flight operation with the power levers below the flight idle stop. Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents and accidents

referenced above, the FAA has determined that:

- All airplanes equipped with turboprop engines (provided the airplane is not certificated for in-flight operation with the power levers below the flight idle stop) should have information in the Limitations Section of the AFM that prohibits positioning of power levers below the flight idle stop while the airplane is in flight, including a statement of consequence if the limitation is not followed; and
- Because SIAI Marchetti S.r.l. Models SF600 and SF600A airplanes are equipped with turboprop engines, are not certificated for in-flight operation with the power levers below the flight idle stop, and do not contain information in the Limitations Section of the AFM that prohibits and explains the consequences of such operation, AD action should be taken. The proposed AD is intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other SIAI Marchetti S.r.l. Models SF600 and SF600A airplanes of the same type design, the proposed AD would require amending the Limitations Section of the AFM to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, including a statement of consequences if the limitation is not followed. This AFM amendment shall consist of the following language:

Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

Possible Alternative to the Proposed AD

SIAI Marchetti S.r.l. is determining whether it will develop AFM revisions for the affected airplanes. If SIAI Marchetti S.r.l. does develop AFM revisions and they are completed and approved by the FAA prior to issuance of the final rule, then incorporating these revisions into the AFM will be included as a method of complying with the AD.

Compliance Time of the Proposed AD

The FAA has determined that the compliance time of the proposed AD should be specified in calendar time instead of hours time-in-service. While

the condition addressed by the proposed AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The proposed compliance time of "30 days after the effective date of this AD" would not inadvertently ground airplanes and would assure that all owners/operators of the affected airplanes accomplish the proposed action in a reasonable time period.

Cost Impact

None of the SIAI Marchetti S.r.l. Models SF600 and SF600A airplanes affected by the proposed AD are on the U.S. Register, and are therefore, not directly affected by the proposed AD. However, the FAA considers the proposed rule necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register.

Should an affected airplane be imported and placed on the U.S. Register, it would take approximately 1 workhour per airplane to incorporate the proposed AFM amendment, at an average labor rate of approximately \$60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owner/operator to amend the AFM.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this

action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

SIAI Marchetti S.R.1.: Docket No. 97-CE-26-AD.

Applicability: Models AF600 and SF600A airplanes, all serial numbers, certificated in any category.

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

Compliance: Required within the next 30 days after the effective date of this AD, unless already accomplished.

To prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Amend the Limitations Section of the airplane flight manual (AFM) by inserting the following language:

"Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power."

(b) This action may be accomplished by incorporating a copy of this AD into the Limitations Section of the AFM.

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

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) Information related to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on June 25, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-17262 Filed 7-1-97; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-NM-39-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires an inspection to detect damage of the wire bundles in the left side of the flight compartment in the vicinity of the stowage box for the captain's oxygen mask, and repair, if necessary; a continuity check on repaired wires; installation of sleeving over the wire bundles; and rerouting of

the wire bundles. This action would require modifications of the captain's and first officer's consoles in the flight compartment to ensure adequate clearance between oxygen equipment and adjacent wire bundles. This proposal is prompted by reports indicating that chafed wiring and wire insulation wear occurred in the vicinity of the stowage box for the captain's oxygen mask due to interference between oxygen line fittings and adjacent wire bundles. The actions specified by the proposed AD are intended to prevent such chafing and inadequate clearance, which could result in electrical arcing and consequent oxygen leakage in the vicinity of the stowage box; these conditions, if not corrected, could result in a fire in the flight compartment.

DATES: Comments must be received by August 11, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 97-NM-39-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Susan Letcher, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227-2670; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic,

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97-NM-39-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 97-NM-39-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

On October 2, 1995, the FAA issued AD 95-21-05, amendment 39-9390 (60 FR 52844, October 11, 1995), applicable to certain Boeing Model 767 airplanes, to require a one-time inspection to detect damage of the wire bundles in the left side of the flight compartment in the vicinity of the stowage box for the captain's oxygen mask, and repair, if necessary; a continuity check on repaired wires; installation of sleeving over the wire bundles; and rerouting of the wire bundles. That action was prompted by reports of chafed wiring and minimal clearance between the oxygen connector and the adjacent wire bundles in the vicinity of the stowage box for the captain's oxygen mask. The requirements of that AD are intended to prevent such chafing and inadequate clearance, which could result in electrical arcing and consequent oxygen leakage in the vicinity of the stowage box; these conditions, if not corrected, could result in a fire in the flight compartment.

Actions Since Issuance of Previous Rule

In the preamble to AD 95-21-05, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary, and this AD follows from that determination.

Additionally, since the issuance of that AD, a number of reports have been received that indicate interference

between oxygen line fittings on the stowage box for the captain's oxygen mask and adjacent wire bundles. This condition, if not corrected, could cause wires on the oxygen line fittings to chafe, which could lead to possible electrical arcing with the fitting, a hole in the fitting, and an oxygen leak; and result in an uncontrolled fire in the flight compartment.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767-35A0029, dated January 30, 1997, which describes procedures for modifications of the captain's and first officer's consoles in the flight compartment to ensure adequate clearance between oxygen equipment and adjacent wire bundles. At the disconnect panel on the captain's console, modification includes rerouting wires and installing certain components. At the first officer's console, modification includes installing certain components, such as a 90-degree backshell on the electrical connector to the dimmer module and a new bracket assembly. Ensuring adequate clearance between the oxygen system components and adjacent wire bundles will reduce the potential for future wire chafing on the consoles in the flight compartment.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 95-21-05 to continue to require an inspection to detect damage of the wire bundles in the left side of the flight compartment in the vicinity of the stowage box for the captain's oxygen mask, and repair, if necessary; a continuity check on repaired wires; installation of sleeving over the wire bundles; and rerouting of the wire bundles. The proposed AD also would require modifications of the captain's and first officer's consoles in the flight compartment to ensure adequate clearance between oxygen equipment and adjacent wire bundles. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

Cost Impact

There are approximately 568 Boeing Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 185 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 95-21-05 take approximately 3 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Required parts cost approximately \$50 per airplane. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be \$42,550, or \$230 per airplane.

The new actions that are proposed in this AD action would take approximately 11 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Required parts would cost approximately \$479 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be \$210,715, or \$1,139 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation

Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-9390 (60 FR 52844, October 11, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 97-NM-39-AD. Supersedes AD 95-21-05, Amendment 39-9390.

Applicability: Model 767 series airplanes, as listed in Boeing Alert Service Bulletin 767-35A0029, dated January 30, 1997; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent wire chafing and subsequent electrical arcing in the vicinity of the stowage box for the captain's oxygen mask, which could result in a fire in the flight compartment, accomplish the following:

Restatement of Requirements of AD 95-21-05

(a) For Model 767 series airplanes having line positions 2 through 589 inclusive except VA801 through VA810 inclusive, VN684 through VN691 inclusive, and VW701: Within 45 days after October 26, 1995 (the effective date of AD 95-21-05, amendment 39-9390), inspect to detect damage of the wire bundles in the left side of the flight compartment in the vicinity of the stowage box for the captain's oxygen mask, in accordance with Boeing Alert Service Bulletin 767-35A0028, dated September 7, 1995.

(1) If no damage is detected, prior to further flight, install protective sleeving on the wiring, and reroute the wire bundles, in accordance with the alert service bulletin.

(2) If any damage is detected, prior to further flight, accomplish the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Repair the wiring and perform a continuity check on each repaired wire, in accordance with the alert service bulletin. And

(ii) Install protective sleeving on the wiring and reroute the wire bundles, in accordance with the alert service bulletin.

New Requirements of This AD

(b) For all airplanes: Within 18 months after the effective date of this AD, modify the airplane wiring in the vicinity of the captain's and first officer's consoles, in accordance with Boeing Alert Service Bulletin 767-35A0029, dated January 30, 1997. Accomplishment of this modification constitutes terminating action for the inspection requirements of this AD.

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

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

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

Issued in Renton, Washington, on June 26, 1997.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-17285 Filed 7-1-97; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96-ASO-20]

RIN 2120-AA66

Proposed Modification of Multiple Federal Airways, Jet Routes and Reporting Points; Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal would modify the airspace designation for several jet routes, Federal airways, and the Other Domestic Reporting Point "COVIA" in the State of Florida. This action is necessary due to the Tallahassee, FL, Very High Frequency Omnidirectional Range/Tactical Air Navigation Aids (VORTAC) being renamed Seminole, FL, VORTAC. As a result, the airspace designations associated with that navigational aid must be modified. The effective date to change the name of the

navigational aid would coincide with this rulemaking action.

DATES: Comments must be received on or before August 11, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO-500, Docket No. 96-ASO-20, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia Crawford, Airspace and Rules Division, ATA-400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96-ASO-20." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA

personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the airspace designations of several jet routes, Federal airways, and the "COVIA" Reporting Point located in the State of Florida. Currently, the Tallahassee, FL, VORTAC and the Tallahassee Regional Airport share the same name and location identifier; however, the navigational aid is not located on the airport property. The existence of two distinct facilities with an identical name has created problems for air traffic operations that impact departure and arrival procedures, and has caused confusion among pilots in their flight plan navigation. To ensure that airspace users are able to clearly identify the navigational aid, versus the airport, the FAA is proposing to change the name of the Tallahassee VORTAC to Seminole VORTAC. This action would enhance air traffic procedures and simplify navigation. Jet routes, domestic Federal airways, and other domestic reporting points are published in paragraphs 2004, 6010(a), and 7003, respectively, of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR section 71.1. The jet routes, airways, and reporting point listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will

only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 2004—Jet Routes

* * * * *

J-2 [Revised]

From Mission Bay, CA, via Imperial, CA; Bard, AZ; INT of the Bard 089° and Gila Bend, AZ, 261° radials; Gila Bend, Cochise, AZ; El Paso, TX; Fort Stockton, TX; Junction, TX; San Antonio, TX; Humble, TX; Lake Charles, LA; Semmes, AL; Crestview, FL; INT of the Crestview 091° and the Seminole, FL, 290° (T) 282° (M) radials; Seminole; to Taylor, FL.

* * * * *

J-20 [Revised]

From Seattle, WA, via Yakima, WA; Pendleton, OR; Donnelly, ID; Pocatello, ID; Rock Springs, WY; Falcon, CO; Hugo, CO; Lamar, CO; Liberal, KS; INT Liberal 137° and Will Rogers, OK, 284° radials; Will Rogers; Belcher, LA; Jackson, MS; Montgomery, AL; Meridian, MS; Seminole, FL; INT Seminole 129° (T) 131° (M) and Orlando, FL 306° radials; Orlando; INT Orlando 140° and Virginia Key, FL, 344° radials; Virginia Key.

* * * * *

J-41 [Revised]

From Key West, FL; Lee County, FL; St Petersburg; Seminole, FL; Montgomery, AL; Vulcan, AL; Memphis, TN; Springfield, MO; Kansas City, MO, to Omaha, NE.

* * * * *

J-43 [Revised]

From Dolphin, FL; LaBelle, FL; St. Petersburg, FL; Seminole, FL; Atlanta, GA; Volunteer, TN; Falmouth, KY; Rosewood, OH; Carleton, MI; to Sault Ste. Marie, MI.

* * * * *

J-73 [Revised]

From Dolphin, FL; LaBelle, FL; Lakeland, FL; Seminole, FL; La Grange, GA; Nashville, TN; Pocket City, IN; to Northbrook, IL.

* * * * *

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V-7 [Revised]

From Dolphin, FL; INT Dolphin 299° and Lee County, FL, 120° radials; Lee County; Lakeland, FL; Cross City, FL; Seminole, FL; Wiregrass, AL; INT Wiregrass 333° and Montgomery, AL, 129° radials; Montgomery; Vulcan, AL; Muscle Shoals, AL; Graham, TN; Central City, KY; Pocket City, IN; INT Pocket City 016° and Terre Haute, IN, 191° radials; Terre Haute; Boiler, IN; Chicago Heights, IL; INT Chicago Heights 358° and Falls, WI, 170° radials; Falls; Green Bay, WI; Menominee, MI; Marquette, MI. The airspace below 2,000 feet MSL outside the United States is excluded. The portion outside the United States has no upper limit.

* * * * *

V-97 [Revised]

From Dolphin, FL; La Belle, FL; St. Petersburg, FL; Seminole, FL; Pecan, GA; Atlanta, GA; INT Atlanta 001° and Volunteer, TN, 197° radials; Volunteer; London, KY; Lexington, KY; Cincinnati, OH; Shelbyville, IN, INT Shelbyville 313° and Boiler, IN, 136° radials; Boiler; Chicago Heights, IL; to INT Chicago Heights 358° and Chicago O'Hare, IL, 127° radials. From INT Northbrook, IL, 290° and Janesville, WI, 112° radials; Janesville; Lone Rock, WI; Nodine, MN; to Gopher, MN. The airspace below 2,000 feet MSL outside the United States is excluded.

* * * * *

V-198 [Revised]

From San Simon, AZ, via Columbus, NM; El Paso, TX; 6 miles wide; INT El Paso 109° and Hudspeth, TX, 287° radials; 6 miles wide; Hudspeth; 29 miles, 38 miles, 82 MSL, INT Hudspeth 109° and Fort Stockton, TX, 284° radials; 18 miles, 82 MSL; Fort Stockton; 20 miles, 116 miles, 55 MSL; Junction, TX; San Antonio, TX; Eagle Lake, TX; Hobby, TX; Sabine Pass, TX; White Lake, LA; Tibby, LA; Harvey, LA; 69 miles, 33 miles, 25 MSL; Brookley, AL; INT Brookley 056° and Crestview, FL, 266° radials; restview; Marianna, FL; Seminole, FL; Greenville, FL; Taylor, FL; INT Taylor 093° and Craig, FL, 287° radials; to Craig.

* * * * *

V-295 [Revised]

From Virginia Key, FL; INT Virginia Key 014° and Vero Beach, FL, 143° radials; Vero Beach; INT Vero Beach 296° and Orlando, FL, 162° radials; Orlando; Ocala, FL; Cross

City, FL; to Seminole, FL. The portion outside the United States has no upper limit.

* * * * *

Paragraph 7003—Other Domestic Reporting Points

* * * * *

COVIA: [Revised]

Lat. 27°56'11"N., long. 84°44'10"W. (INT Sarasota, FL, 286°, Seminole, FL, 187°T(185°M) radials)

* * * * *

Issued in Washington, DC, on June 17, 1997.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic.

Airspace Management

[FR Doc. 97-17390 Filed 7-1-97; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF LABOR**Employment Standards Administration****20 CFR Part 702****RIN 1215-AB17****Office of Workers' Compensation Programs; Longshore Act Civil Money Penalties Adjustment**

AGENCY: Employment Standards Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Department of Labor is proposing to revise certain provisions of the regulations implementing the Longshore and Harbor Workers' Compensation Act (LHWCA). More specifically, the regulatory changes will increase the maximum civil penalties that can be assessed under the LHWCA as required by the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990 (FCPIAA) (Pub. L. 101-410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (DCIA) (Pub. L. 104-134, 110 Stat. 1321-1373).

DATES: Written comments must be submitted on or before August 1, 1997.

ADDRESSES: Send written comments to Joseph F. Olimpio, Director for Longshore and Harbor Workers' Compensation, Employment Standards Administration, U.S. Department of Labor, Room C-4315, 200 Constitution Avenue, NW., Washington, DC 20210-0002. Tel. (202) 219-8721.

FOR FURTHER INFORMATION CONTACT: Joseph F. Olimpio at the address and telephone number listed above.

SUPPLEMENTARY INFORMATION: The DCIA, amending the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990 (FCPIAA) (Pub. L. 104-410, 104

Stat. 890), requires each agency to issue regulations adjusting the civil money penalties that they are authorized to levy. The DCIA requires that the civil money penalty covered by the DCIA be adjusted by a cost-of-living increase equal to the percentage, if any, by which the Department of Labor's Consumer Price Index for all-urban consumers (CPI) for June of the calendar year preceding the adjustment exceeds the June CPI for the calendar year in which the civil penalty amount was last set or adjusted. The increase is then mathematically rounded pursuant to section 5 of the FCPIAA to arrive at the final adjusted figure, which may not, for the first adjustment under the FCPIAA as amended, exceed 10% of the current statutory civil penalty amount.

The LHWCA authorizes the assessment of a civil money penalty in three situations: (1) Where an employer fails to file a report within sixteen days of the final payment of compensation, it shall be assessed a \$100.00 civil penalty (LHWCA section 14(g)); (2) where an employer, insurance carrier, or self-insured employer knowingly and willfully fails to file any report required by section 30, or knowingly or willfully makes a false statement or misrepresentation in any required report, the employer, insurance carrier, or self-insured employer shall be assessed a civil penalty not to exceed \$10,000.00 (LHWCA section 30(e)); and (3) where an employer is found to have discriminated against an employee because he claimed or attempted to claim compensation, or has testified or is about to testify in proceedings under the LHWCA, the employer shall be liable for a civil penalty of not less than \$1,000.00 or more than \$5,000.00 (LHWCA section 49).

Due to inflation since the civil money penalties in the LHWCA were last set or adjusted, the increase will, in every case, be the maximum 10% initially permitted under the DCIA. The adjusted civil penalties will apply only to violations occurring after the proposed regulations become effective.

Executive Order 12866

The Department has determined that this regulatory action is not a "significant" rule within the meaning of Executive Order 12866 concerning federal regulations, because it is not likely to result in: (1) An annual effect on the economy of \$100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) the creation of a

serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligation of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires each agency to perform an initial regulatory flexibility analysis for all proposed rules unless the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions. This proposed regulation does no more than mechanically increase certain statutory civil money penalties to account for inflation, pursuant to specific directions set forth in the FCPIAA, as amended. The statute specifies the procedures for calculating the adjusted civil money penalties and does not allow the Department to vary the calculation to minimize the effect on small entities. Moreover, it will be noted that during the period 1995 through 1996, an average of \$25,000.00 in civil penalties was collected each year in 206 cases. Under the amended rule, the total additional amount collected would not exceed \$2,500.00. As a result, the Assistant Secretary hereby certifies that the rule, if adopted as proposed, will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, as well as E.O. 12875, this rule does not include any federal mandate that may result in increased expenditures by State, local and tribal governments, or increased expenditures by the private sector of more than \$100 million.

Paperwork Reduction Act

The proposed rule does not contain any collection of information requirements.

List of Subjects in 20 CFR Part 702

Administrative practice and procedure, Claims, Insurance, Longshoremen, Vocational rehabilitation, and Workers' compensation.

For the reasons set forth in the preamble, it is proposed that part 702 of chapter VI of title 20, Code of Federal Regulations, be amended as follows:

PART 702—ADMINISTRATION AND PROCEDURE

1. The authority citation for part 702 is revised to read as follows:

Authority: 5 U.S.C. 301, 8171 *et seq.*, Reorganization Plan No. 6 of 1950, 15 FR 3174, 3 CFR 1949-1953, Comp., p. 1004, 64 Stat. 1263; 28 U.S.C. 2461, 33 U.S.C. 939, 36 D.C. Code 501 *et seq.*, 42 U.S.C. 1651 *et seq.*, 43 U.S.C. 1331; Secretary's Order 5-96, 62 FR 107.

2. Section 702.204 is revised to read as follows:

§ 702.204 Employer's report; penalty for failure to furnish and/or falsifying.

Any employer, insurance carrier, or self-insured employer who knowingly and willfully fails or refuses to send any report required by § 702.201, or who knowingly or willfully makes a false statement or misrepresentation in any report, shall be subject to a civil penalty not to exceed \$10,000 for each such failure, refusal, false statement, or misrepresentation. Provided, however, that for any violation occurring on or after (insert effective date of revised regulations), the maximum civil penalty may not exceed \$11,000.00. The district director shall have the authority and responsibility for assessing a civil penalty under this section.

3. Section 702.236 is revised to read as follows:

§ 702.236 Penalty for failure to report termination of payments.

Any employer failing to notify the district director that the final payment of compensation has been made as required by § 702.235 shall be assessed a civil penalty in the amount of \$100. Provided, however, that for any violation occurring on or after (insert effective date of revised regulations) the civil penalty will be \$110.00. The district director shall have the authority and responsibility for assessing a civil penalty under this section.

4. Paragraph (a) of § 702.271 is revised to read as follows:

§ 702.271 Discrimination against employees who bring proceedings, prohibition and penalty.

(a) No employer or its duly authorized agent may discharge or in any manner discriminate against an employee as to his/her employment because that employee: has claimed or attempted to claim compensation under this Act; or has testified or is about to testify in a proceeding under this Act. To discharge

or refuse to employ a person who has been adjudicated to have filed a fraudulent claim for compensation or otherwise made a false statement or misrepresentation under section 31(a)(1) of the Act, 33 U.S.C. 931(a)(1), is not a violation of this section. Any employer who violates this section shall be liable to a penalty of not less than \$1,000 or more than \$5,000 to be paid (by the employer alone, and not by a carrier) to the district director for deposit in the special fund described in section 44 of the Act, 33 U.S.C. 944; and shall restore the employee to his or her employment along with all wages lost due to the discrimination unless that employee has ceased to be qualified to perform the duties of the employment. Provided, however, that for any violation occurring on or after (insert the effective date of the regulations) the employer shall be liable to a penalty of not less than \$1,100.00 or more than \$5,500.00.

* * * * *

Signed at Washington, DC, this 25th day of June, 1997.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

Shelby Hallmark,

Acting Director, Office of Workers' Compensation Programs.

[FR Doc. 97-17351 Filed 7-1-97; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 207, 251, 252, 255, and 266

[Docket No. FR-4203-P-01]

Electronic Payment of Multifamily Insurance Premiums

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes that all annual multifamily mortgage insurance premium (MIP) collections in accordance with 24 CFR parts 207, 251, 252, 255, and 266 be made by the Automated Clearing House (ACH) program. The purpose of this rule is to improve the efficiency of the Multifamily Mortgage Insurance Program and reduce costs to HUD lenders. This rule would not affect the initial payment of MIPs.

DATES: Comment Due Date: September 2, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding

this proposed rule to the Rules Docket Clerk, room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Samuel N. Conner, Acting Director, Multifamily Accounting and Servicing Division, Room 6208, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20024; telephone (202) 708-0223. Hearing-impaired or speech-impaired individuals may access the voice telephone number listed above by calling the Federal Information Relay Service during working hours at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

In August 1985, HUD implemented the Automated Clearing House (ACH) program. The Multifamily Insurance Operations Branch entered into the program in 1992, with voluntary participation by mortgagees for payment of multifamily mortgage insurance premiums (MIPs).

The ACH program is designed to provide FHA approved lenders the opportunity to utilize their personal computers to authorize electronically the payment of MIPs, instead of sending checks through lockbox. Currently, more than 60 percent of HUD's MIPs are being collected through the ACH program.

The mortgagees' terminal operators tie their personal computers into the collection agent's ACH system. The collection agent originates an ACH file of debit transactions based on bills.

Each evening, the collection agent originates an ACH file of debit transactions based on the data keyed by the mortgagees. When the debit transactions have been processed, the ACH will transmit the MIP data to HUD's Multifamily Information System. Through this ACH process, the debit amount is drawn electronically from the designated mortgagee's bank account that day.

After transmission, the insurance premium transactions are processed in the same manner as in the past.

The ACH transfer system uses the mortgagee number as part of the "log on" procedure. Any error in the mortgagee number results in the ACH

transfer system rejecting the "log on" attempt. In addition, the ACH transfer system balances the dollar fields in each detail transaction to the amount entered, along with the item number. Where there is an error, the system produces an error message that describes the problem. The error must be corrected before the ACH transfer system will prepare the ACH entries.

The general Late Charge policy for the ACH program is the same as for MIPs sent to the Atlanta lockbox address. Late charges are levied if payment is received later than 15 days after due date. For the ACH program, the late charge amount is automatically calculated by the system.

ACH provides lenders with numerous tangible benefits that should reduce their servicing costs. The advantages of ACH are:

- (1) Control of payment timing—the use of ACH debits and credits can increase control of payment initiation and funds availability;
- (2) Banking costs are reduced—ACH transfer costs less than paper check and wire transfer;
- (3) Accounting reconciliation is reduced—payments are computerized and cash application is more automated than with manual systems;
- (4) On-line edits can reduce data errors created by manual recording; and
- (5) The chance of lost/late mail is eliminated.

Because ACH provides mortgage lenders as well as HUD with numerous tangible benefits that reduce servicing costs, HUD is proposing that ACH become the sole method for collecting annual MIPs. HUD believes that this rule will not have a significant economic impact on the smaller lending community since personal computing is so pervasive within the industry. The rule implements a program that will enhance operations and be cost beneficial for all mortgage lenders. Implementation of this process will be phased-in and coordinated with lenders on an individual basis.

Other Matters

Environmental Review

This amendment is excluded from the environmental review requirements of the National Environmental Policy Act (42 U.S.C. 4321-4347) and the other related Federal environmental laws and authorities, as set forth in 24 CFR part 50. In keeping with the exclusion provided for in 24 CFR 50.19(c)(1), this amendment would not "direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate property acquisition, disposition, lease, rehabilitation,

alteration, demolition, or new construction, or set out or provide for standards for construction or construction materials, manufactured housing, or occupancy." Accordingly, under 24 CFR 50.19(c)(2), this amendment is categorically excluded because it amends a previous document where the underlying document as a whole would not fall within the exclusion set forth in 24 CFR 50.19(c)(1), but the amendment by itself would do so.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities. A survey of presently insured mortgagees indicates that nearly all mortgagees have computers that would allow them to submit electronic payments. The cost of the software package is approximately \$30.00. HUD recognizes, however, that the uniform application of requirements on entities of differing sizes often places a disproportionate burden on small entities. Therefore, HUD specifically solicits comments as to whether this proposed rule would significantly impact a substantial number of small entities, and as to any less burdensome alternatives.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this rule would not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers are 14.129, 14.155, and 14.188.

List of Subjects*24 CFR Part 207*

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 251

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 252

Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

24 CFR Part 255

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 266

Aged, Fair housing, Intergovernmental relations, Mortgage insurance, Low and moderate income housing, Reporting and recordkeeping requirements.

Accordingly, the Department proposes to amend Subtitle B, Chapter II, Subchapter B, of Title 24 of the Code of Federal Regulations as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for part 207 continues to read as follows:

Authority: 12 U.S.C. 1701z-11(e), 1713, and 1715b; 42 U.S.C. 3535(d).

2. A new § 207.252e to subpart B is added to read as follows:

§ 207.252e Method of payment of mortgage insurance premiums.

In the cases that the Commissioner deems appropriate, the Commissioner may require, by means of instructions communicated to all affected mortgagees, that mortgage insurance premiums be remitted electronically.

PART 251—COINSURANCE FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

3. The authority citation for part 251 continues to read as follows:

Authority: 12 U.S.C. 1515b, 1715z-9; 42 U.S.C. 3535(d).

4. A new § 251.6 is added to read as follows:

§ 251.6 Method of payment of mortgage insurance premiums.

In the cases that the Commissioner deems appropriate, the Commissioner may require, by means of instructions communicated to all affected lenders, that mortgage insurance premiums be remitted electronically.

PART 252—COINSURANCE OF MORTGAGES COVERING NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

5. The authority citation for part 252 continues to read as follows:

Authority: 12 U.S.C. 1515b, 1715z-9; 42 U.S.C. 3535(d).

6. A new § 252.6 is added to read as follows:

§ 252.6 Method of payment of mortgage insurance premiums.

The provisions of 24 CFR 251.6 shall apply to this part.

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

7. The authority citation for part 255 is revised to read as follows:

Authority: 12 U.S.C. 1515b, 1715z-9; 42 U.S.C. 3535(d).

8. A new § 255.6 is added to read as follows:

§ 255.6 Method of payment of mortgage insurance premiums.

The provisions of 24 CFR 251.6 shall apply to this part.

PART 266—HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

9. The authority citation for part 266 continues to read as follows:

Authority: 12 U.S.C. 1707 note; 42 U.S.C. 3535(d).

10. A new § 266.610 is added to read as follows:

§ 266.610 Method of payment of mortgage insurance premiums.

In the cases that the Commissioner deems appropriate, the Commissioner may require, by means of instructions communicated to all affected mortgagees, that mortgage insurance premiums be remitted electronically.

Dated: May 30, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 97-17291 Filed 7-1-97; 8:45 am]

BILLING CODE 4210-27-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Parts 950, 953, 955, 1000, 1003 and 1005**

[Docket No. FR-4170-P-10]

RIN 2577-AB74

Implementation of the Native American Housing Assistance and Self-Determination Act of 1996; Proposed Rule

AGENCY: Office of the Assistant Secretary for Public and Indian Housing; HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). NAHASDA reorganizes the system of Federal housing assistance to Native Americans by eliminating several separate programs of assistance and replacing them with a single block grant program. In addition to simplifying the process of providing housing assistance, the purpose of NAHASDA is to provide Federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-governance. As required by section 106(b)(2) of NAHASDA, HUD has developed this proposed rule with active tribal participation and using the procedures of the Negotiated Rulemaking Act.

DATES: Comments on the proposed rule are due on or before August 18, 1997. Comments on the proposed information collection requirements are due on or before September 2, 1997.

ADDRESSES: Interested persons are invited to submit written comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments will not be accepted.

For additional information concerning the information collection requirements contained in this rule, please see the "Findings and Certifications" section of this preamble. A copy of any comment regarding the information collection requirements must be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Dominic Nessi, Deputy Assistant Secretary for Native American Programs, 1999 Broadway, Suite 3390, Denver, CO 80202; telephone (303) 675-1600. Speech or hearing-impaired individuals may access this number via TTY by calling the Federal Information Relay Service at 1-800-877-8339. (With the exception of the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Statutory Background

On October 26, 1996, President Clinton signed into law the Native American Housing Assistance and Self-Determination Act of 1996 (Pub. L. 104-330) (NAHASDA). NAHASDA streamlines the process of providing housing assistance to Native Americans. Specifically, it eliminates several separate programs of assistance and replaces them with a single block grant program. Beginning on October 1, 1997, the first day of Fiscal Year (FY) 1998, a single block grant program will replace assistance previously authorized under:

1. The United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act);
2. The Indian Housing Child Development Program under Section 519 of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 1701z-6 note);
3. The Youthbuild Program under subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12899 *et seq.*);
4. The Public Housing Youth Sports Program under section 520 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 11903a);
5. The HOME Investment Partnerships Program under title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12721 *et seq.*); and
6. Housing assistance for the homeless under title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11361 *et seq.*) and the Innovative Homeless Demonstration Program under section 2(b) of the HUD Demonstration Act of 1993 (42 U.S.C. 11301 note).

In addition to simplifying the process of providing housing assistance, the

purpose of NAHASDA is to provide Federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-governance.

Section 106 of NAHASDA sets out the general procedure for the implementation of the new Indian housing block grant (IHBG) program. The procedure described is a two-step process. First, section 106(a) requires the publication of a notice in the **Federal Register** not later than 90 days after enactment of NAHASDA. The purpose of the notice is to establish any requirements necessary for the transition from the provision of assistance for Indian tribes and Indian housing authorities under the 1937 Act and other related provisions of law to the provision of assistance in accordance with NAHASDA. Secondly, section 106(b) requires that HUD issue final regulations implementing NAHASDA no later than September 1, 1997. Section II of this preamble discusses the transition requirements established by HUD. The remainder of the preamble presents an overview of the development and contents of the proposed regulations.

II. Transition Requirements

On January 27, 1997 (62 FR 3972), HUD published the transition notice required by section 106(a) of NAHASDA. HUD subsequently amended the January 27, 1997 notice to extend the Indian Housing Plan (IHP) submission deadline to November 3, 1997 (62 FR 8258, February 24, 1997).

The January 27, 1997 notice focused on the information which must be included in an Indian tribe's IHP and the treatment of activities and funding under programs repealed by NAHASDA. Although section 106(b) of NAHASDA requires that HUD issue final regulations by September 1, 1997, the "old" system of funding expires on the first day of FY 1998 (October 1, 1997). The submission of an IHP and a determination by HUD that the IHP complies with NAHASDA is a prerequisite for funding under NAHASDA. Accordingly, the January 27, 1997 notice established IHP submission requirements in order to ensure that there is sufficient time for Indian tribes to prepare their IHPs, and for HUD to review them. Similarly, the January 27, 1997 notice provided guidance for the treatment of activities and funding under programs repealed by NAHASDA in order to permit Indian tribes to have the greatest time available under the new law to consider and prepare for the transition from the "old" programs to the new IHBG program.

The deadline for submission of an IHP is November 3, 1997. Indian tribes wishing to participate in the new IHBG program in FY 1998 should familiarize themselves with the transition requirements established in the **Federal Register** notices described above.

III. Negotiated Rulemaking

As described above, section 106(b) of NAHASDA requires that HUD issue final implementing regulations no later than September 1, 1997. Further, section 106(b)(2)(A) of NAHASDA provides that all regulations required under NAHASDA be issued according to the negotiated rulemaking procedure under subchapter III of chapter 5 of title 5, United States Code. The rulemaking procedure referenced is the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561-570). Accordingly, the Secretary of HUD established the Native American Housing Assistance & Self-Determination Negotiated Rulemaking Committee (Committee) to negotiate and develop a proposed rule implementing NAHASDA.

Prior to the establishment of the Committee, HUD held a series of meetings with tribal representatives to discuss the regulatory implementation of NAHASDA. These meetings were preliminary to the formal negotiated rulemaking process required by NAHASDA. The preliminary meetings provided a valuable exchange of ideas that assisted in focusing the efforts of the Committee.

The Committee consists of 58 members. Forty-eight of these members represent geographically diverse small, medium, and large Indian tribes. There are ten HUD representatives on the Committee. Additionally, three individuals from the Federal Mediation and Conciliation Service served as facilitators. While the Committee is much larger than usually chartered under the Negotiated Rulemaking Act, its larger size was justified due to the diversity of tribal interests, as well as the number and complexity of the issues involved.

Tribal leaders recommended and the Committee agreed to operate based on consensus rulemaking and its approved charter. The protocols adopted by the Committee define "consensus" as general agreement demonstrated by the absence of expressed disagreement by a Committee member in regards to a particular issue. Procedures recommended by tribal leaders on the negotiated rulemaking process were also adopted by the Committee. HUD committed to using, to the maximum extent feasible consistent with its legal obligations, all consensus decisions as

the basis for the proposed rule. The Committee further agreed that any Committee member or his/her constituents could comment on this proposed rule. The Committee will consider all comments in drafting the final rule.

In order to complete the proposed regulations by the statutory deadline, the Committee divided itself into six workgroups. Each workgroup was charged with analyzing specified provisions of the statute and drafting any regulations it believed were necessary for implementing those provisions. The draft regulations developed by the workgroups were then brought before the full Committee for review, amendment, and approval. A seventh workgroup was assigned the task of reviewing the approved regulations for format, style, and consistent use of terminology. The seven workgroups were: (1) Preamble, Policy and Definitions; (2) IHP Preparation and Submission, Monitoring, Review and Compliance; (3) Allocation Formula; (4) Affordable Housing Activities; (5) Transition Requirements; (6) Alternative Financing; and (7) Drafting Coordination.

The first meeting of the Committee was in February of 1997. At that meeting the Committee established workgroups, a protocol for deliberations and a meeting schedule. During February, March and April 1997 the Committee met four times. The meetings were divided between workgroup sessions at which regulatory language was developed and full Committee sessions to discuss the draft regulations produced by the workgroups. Each of these meetings lasted between four and eight days. Tribal leaders were encouraged to attend the meetings and participate in the rulemaking process.

It was the Committee's policy to provide for public participation in the rulemaking. All of the Committee sessions were announced in the **Federal Register** and were open to the public.

IV. Summary of New 24 CFR Part 1000

The rule proposes to implement NAHASDA in a new 24 CFR part 1000. Part 1000 would be divided into six subparts (A through F), each describing the regulatory requirements for a different aspect of NAHASDA. For the convenience of readers, part 1000 is in Question and Answer format. Additionally, the rule will as much as practicable not repeat statutory language but rather make reference to specific provisions. A reader of the rule must therefore have the statute available while reading the rule.

The full Committee reached consensus on the individual subparts of this proposed rule. However, the Committee has yet to endorse an integrated proposed rule. The full Committee asks for public comment on the workgroup products, and suggestions regarding any modifications necessary to produce an integrated rule. The full Committee will meet to consider the public comments and to produce an integrated final rule.

The following is a brief description of the contents of each subpart:

Subpart A—General

Subpart A would contain the legal authority and scope of the regulations. It would also set forth definitions for key terms used in the balance of the regulations. Additionally, subpart A would cross-reference to other applicable Federal laws and regulations. Although HUD encourages readers to familiarize themselves with all of the provisions of subpart A, it wishes to highlight the following sections contained in this subpart:

Section 1000.8. Section 1000.8 provides that HUD may waive any non-statutory provision of this rule in accordance with 24 CFR 5.110. This section requires that any waivers be based upon a determination of good cause. In making this determination, HUD may consider such factors as undue hardship. Under section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) waivers will be in writing and published in the **Federal Register**.

Section 1000.10. Section 1000.10 sets forth the generally applicable definitions used throughout 24 CFR part 1000. The Committee has adopted without change many of the definitions set forth in section 4 of NAHASDA. Section 1000.10 proposes to define the terms "Adjusted income," "Affordable housing," "Drug-related criminal activity," "Elderly families and near-elderly families," "Elderly person," "Grant beneficiary," "Indian," "Indian housing plan (IHP)," "Indian tribe," "Low-income family," "Median income," "Near-elderly persons," "Nonprofit," "Recipient," "Secretary," "State," and "Trially designated housing entity (TDHE)" by cross-referencing to section 4. Further, the term "Affordable housing activities" is defined by cross-referencing to the list of eligible activities set forth in section 202 of NAHASDA.

In the case of the definitions of "Family" and "Indian area," the Committee determined that it was necessary to make minor clarifying changes to the statutory definitions in

section 4 of NAHASDA. Specifically, the definition of "Family" has been revised to clarify that the term includes, but is not limited to, the types of families identified in the statutory definition. Similarly, the Committee has added a sentence to the statutory definition of "Indian area" to specify that "[w]henver the term 'jurisdiction' is used in NAHASDA it shall mean 'Indian area,' except where specific reference is made to the jurisdiction of a court."

Section 4 of NAHASDA required that the Committee develop additional language expanding upon the statutory definitions of "Income" and "Person with disabilities." In both cases, the Committee elected to use the language of existing HUD definitions codified in title 24 of the CFR.

Section 4 of NAHASDA defines "Income" to mean income from all sources of each member of the household "as determined in accordance with criteria prescribed by" HUD. The Committee chose to use the term "annual income," rather than the term "income." Further, the Committee elected to adopt the income criteria set forth in HUD's current Indian housing program regulations at 24 CFR part 950. Accordingly, the definition of "Annual income" set forth in this proposed rule is nearly identical to the existing definition of the term at 24 CFR 950.102.

The statutory definition of "Person with disabilities" requires a regulatory definition of the term "physical, mental, or emotional impairment." The Committee elected to model this definition on the definition of "physical or mental impairment" set forth in HUD's regulations implementing section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) (24 CFR part 8). Although the definition of "physical, mental, or emotional impairment" contained in this proposed rule makes several minor editorial changes to the definition of "physical or mental impairment" at 24 CFR 8.3, these changes do not alter the intent or meaning of the definition in part 8.

The definitions of "Annual contributions contract (ACC)" and "Indian housing authority (IHA)" set forth in this proposed rule are also modelled on the existing definitions of these terms in 24 CFR part 950.

Section 1000.12. This section sets forth the nondiscrimination requirements which are applicable to NAHASDA. Specifically, § 1000.12 provides that the following civil right authorities are applicable to NAHASDA: (1) The requirements of the Age Discrimination Act of 1975 (42 U.S.C.

6101-6107) and HUD's implementing regulations in 24 CFR part 146; (2) section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's regulations at 24 CFR part 8; and (3) title II of the Civil Rights Act of 1968 (25 U.S.C. 1301-1303), to the extent such title is applicable, and other applicable Federal civil rights statutes. Additionally, this section provides that title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*) do not apply to actions by Indian tribes under section 201(b) of NAHASDA.

HUD has revised the regulatory language developed by the Committee by adding the reference to title II of the Civil Rights Act of 1968. This addition reflects the statutory language of section 102(c)(5)(A) of NAHASDA, which requires that recipients include a certification of compliance with title II in their IHP.

Section 1000.14. This section sets forth the relocation and real property acquisition policies which are applicable to NAHASDA. Except for minor editorial and formatting changes, § 1000.14 is identical to the corresponding provision in HUD's regulations for the Indian Community Development Block Grant program (See 24 CFR 953.602).

Section 1000.16. This section describes the labor standards applicable to NAHASDA. Section 1000.16 provides, in accordance with section 104(b) of NAHASDA, that contracts and agreements for assistance, sale or lease under NAHASDA must require prevailing wage rates determined under the Davis-Bacon Act (40 U.S.C. 276a-276a-5) to be paid to laborers and mechanics employed in the development of affordable housing projects. HUD has added a sentence to the regulatory language developed by the Committee to reflect an additional statutory requirement. Specifically, § 1000.16 now provides that section 104(b) also mandates that these contracts and agreements require that prevailing wages determined by HUD shall be paid to maintenance laborers and mechanics employed in the operation, and to architects, technical engineers, draftsmen and technicians employed in the development, of such projects.

Section 1000.20. Section 1000.20 provides that an Indian tribe is not required to assume environmental review responsibilities. Rather, this proposed rule states it is an option an Indian tribe may choose. If an Indian tribe declines to assume the environmental review responsibilities,

HUD will perform the environmental review in accordance with 24 CFR part 50. HUD has added a sentence to the regulatory language adopted by the Committee to clarify that a HUD environmental review must be completed for any activities not excluded from review under 24 CFR 50.19(b) before a recipient may acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds to such activities with respect to the property.

HUD's resources may be such that it may be unable to undertake environmental reviews if the Indian tribe chooses not to assume environmental review responsibilities. HUD needs to examine its resources and further consider this issue. In addition, HUD is reviewing whether a conflict exists between the 60 day maximum period permitted in section 103(a)(2) of NAHASDA for HUD to review the IHP and, in cases where an Indian tribe declines to assume environmental review responsibilities and an activity requires an Environmental Impact Statement (EIS), the greater time required for finalizing EISs prepared and circulated for review and comment in accordance with the National Environmental Policy Act of 1969 prior to a Federal decision being made (including a general minimum of 90 days between publication of a notice of draft EIS and the agency decision). HUD is also reviewing possible options for reconciling the conflict, if any. Accordingly, HUD wishes to alert the public that it may not be legally permissible both to provide for a choice and to give full effect to the requirements of the National Environmental Policy Act of 1969 and related statutes. In particular, if HUD determines that a statutory conflict exists, one of the options for reconciling the conflicts may result in HUD not being able to implement the policy of allowing an Indian tribe the option of not assuming environmental review for actions that are subject to the statutory 60 day approval period.

Further, conforming changes will need to be made at the final rule stage to HUD's regulations at 24 CFR part 58 (Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities) to reflect the environmental review procedures established in new part 1000.

Section 1000.30. This section describes the conflict of interest provisions applicable to 24 CFR part 1000. Paragraph (a) of § 1000.30 cross-references to certain requirements of 24 CFR part 85 (Administrative Requirements for Grants and

Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments). Specifically, § 1000.30(a) as adopted by the Committee provided that "[i]n the procurement of supplies, equipment, construction and services by recipients and subrecipients, the conflict of interest provisions of 24 CFR 85.36 or 24 CFR 85.42 (as applicable) shall apply." HUD has added the phrase "other property" after the word "equipment" in § 1000.30 to clarify that the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 85.42 apply to property as well as services.

HUD welcomes public comment on additional ways it may strengthen the conflict of interest provisions to ensure that affordable housing activities are conducted effectively without fraud, waste, or mismanagement. In particular, HUD invites comment on whether the regulation should require persons who participate in the decision-making process to recuse themselves from decisions that directly affect the provision of assistance to themselves or their relatives. During the public comment period, HUD also will be considering additional ways to strengthen the conflict of interest provisions to ensure that affordable housing activities are conducted effectively without fraud, waste, or mismanagement. Additionally, HUD will be considering whether the final rule should require persons who participate in the decision-making process to recuse themselves from decisions that directly affect the provision of assistance to themselves or their relatives. Accordingly, the final rule may reflect stronger conflict of interest provisions than are set forth in this proposed rule based on any public comments received and HUD's further consideration of the subject matter.

Section 1000.32. This section provides that HUD may make case-by-case exceptions to the conflict of interest provisions set forth in § 1000.30(b). As originally adopted by the Committee, this section would have permitted an Indian tribe or TDHE to grant exceptions. HUD has revised the language adopted by the Committee to specify that only HUD may allow an exception to the conflict of interest provisions. HUD has determined that this change is necessary to ensure that exceptions are granted fairly and without abuse. Further, the change conforms § 1000.32 to its counterpart provision in HUD's regulations governing the Community Development Block Grant (CDBG) program (see 24 CFR 570.611(d)).

Section 1000.38. This section describes the flood insurance

requirements applicable to NAHASDA. Specifically, § 1000.38 provides that under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4128), a recipient may not permit the use of Federal financial assistance for acquisition and construction purposes (including rehabilitation) in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless certain specified conditions are met.

Subpart B—Affordable Housing Activities

Subpart B would contain the regulations necessary for the implementation of title II of NAHASDA. Among the topics addressed by subpart B would be eligible affordable housing activities, low-income requirements, lease requirements and tenant selection. Although HUD encourages readers to familiarize themselves with all of the provisions of subpart B, it wishes to highlight the following sections contained in this subpart:

Section 1000.104. This section lists the types of families which are eligible for affordable housing activities under NAHASDA. Paragraphs (b) and (c) of § 1000.104 set forth the conditions under which a non low-income Indian family or a non-Indian family may receive housing assistance under NAHASDA. Such families are presumed to meet the requirements of § 1000.104 if they are currently residing in housing assisted under the 1937 Act. HUD has added language to the regulatory text adopted by the Committee which clarifies that the presumption applies only if there is no evidence to the contrary.

Sections 1000.106 to 1000.116. Title II of NAHASDA requires HUD approval of certain eligible affordable housing activities under NAHASDA. Specifically, section 202(6) of NAHASDA permits recipients to conduct housing activities under model programs that are designed to carry out the purposes of NAHASDA and that are specifically approved by HUD for such purposes. Further, section 201(b)(2) of NAHASDA permits a recipient to provide certain assistance to non low-income Indian families with HUD approval.

Sections 1000.106 to 1000.116 of this proposed rule concern HUD approval of eligible affordable housing activities. These sections refer to HUD approval of model activities and “other housing programs.” This phrase does not appear in the statutory language of NAHASDA. HUD interprets the phrase “other housing programs” to apply solely to the provision of assistance to non low-

income Indian families under section 201(b)(2) of NAHASDA.

Section 1000.124. Section 1000.124 provides that a recipient may charge a low-income rental tenant or homebuyer payments not to exceed thirty percent of the adjusted income of the family. HUD interprets the phrase “homebuyer payments” to be limited to lease-purchase payments, such as those in the existing Mutual Help Homeownership Opportunity Program (See 24 CFR part 950, subpart E).

HUD has made one modification to the regulatory language adopted by the Committee. That regulation provided that the thirty-percent (30%) requirement “applies only to NAHASDA grant amounts.” HUD has removed this phrase from § 1000.124 since the statutory limitation on the amount of the rent and homebuyer payment is not limited to the grant amounts.

Section 1000.134. Section 1000.134 establishes the conditions under which a recipient (or an entity funded by the recipient) may demolish or dispose of Indian housing units owned or operated pursuant to an Annual Contribution Contract. Paragraph (c) of § 1000.134 provides that in any disposition sale of a housing unit, the recipient will use a sale process designed to maximize the sale price. Further, § 1000.134(c) provides that “[t]he sale proceeds from the disposition of any housing unit are program income under NAHASDA and must be used in accordance with the requirements of NAHASDA and this part.” HUD revised this sentence to more closely track the statutory language of section 104(a)(1)(B) of NAHASDA. As originally adopted by the Committee, the sentence read: “The sale proceeds from the disposition of any housing unit are program income under NAHASDA and must be used for appropriate purposes under NAHASDA.” Section 104(a)(1)(B) requires that the recipient use any “program income for affordable housing activities in accordance with the provisions of this Act.”

Section 1000.136. Section 1000.136 describes the insurance requirements which apply to housing units assisted with NAHASDA grants. Specifically, this section requires that a recipient provide adequate insurance either by purchasing insurance or by indemnification against casualty loss by providing insurance in adequate amounts to indemnify the recipient against loss from fire, weather, and liability claims for all housing units owned or operated by the recipient. HUD has added a sentence to the regulatory language adopted by the

Committee which clarifies that these requirements are in addition to the applicable flood insurance requirements set forth in § 1000.38.

Section 1000.142. Section 205 of NAHASDA sets forth the criteria for affordable housing under NAHASDA. Among other criteria, section 205(a)(2) requires that affordable housing remain affordable “for the remaining useful life of the property (as determined by the Secretary).” Section 1000.142 of this proposed rule reflects the statutory useful life requirement. The Committee developed the following regulatory language for § 1000.142: “Each recipient shall describe in its IHP the useful life of each assisted housing unit in each of its developments.” HUD has modified this language by inserting the phrase “for Secretarial determination” after the word “IHP.” The addition of this phrase clarifies that through approval of the IHP, the Secretary will determine the useful life of the affordable housing as required by section 205.

Section 1000.148. Section 1000.148 describes the information which must be contained in a notice of eviction or termination. The regulatory language adopted by the Committee provided that “[t]he owner or manager will apply the law applicable to the jurisdiction.” For purposes of clarity, HUD has revised § 1000.148 to more closely track the statutory requirements set forth in section 207(a)(5) of NAHASDA. Section 1000.148 now requires that the owner or manager must give adequate written notice of termination of the lease, in accordance with the period of time required under State, tribal, or local law. Further, § 1000.148 provides that, notwithstanding any State, tribal, or local law, the notice must inform the resident of the opportunity, prior to any hearing or trial, to examine any relevant documents, records, or regulations directly related to the eviction or termination.

Section 1000.152. Section 1000.152 tracks the statutory language of section 208(c) of NAHASDA. Section 208(c) concerns the recipient’s use of criminal conviction information on adult applicants and tenants. Section 1000.152 provides that recipients shall use this information solely for purposes of applicant screening, lease enforcement and eviction actions. Further, § 1000.152 provides that “[t]he information may be disclosed only to a person who has a job related need for the information and who is an officer, employee, or authorized representative of the recipient or the owner of housing assisted under NAHASDA.” HUD revised the regulatory language developed by the Committee by

inserting the phrase "or the owner" after the word "recipient." The addition of this phrase conforms § 1000.152 to section 208(c) of NAHASDA, which authorizes the release of criminal conviction information to an officer, employee, or authorized representative of an owner.

Section 1000.156. This section sets forth the housing development cost limits applicable to ensure modest housing construction under NAHASDA. Section 1000.156 provides that, unless approved by HUD, the total development cost (TDC) per unit will be no more than 100% of the TDC. HUD has added a sentence to the regulatory language adopted by the Committee to clarify that TDC shall include the costs of making a project meet the accessibility requirements of 24 CFR part 8 (Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development) for new construction and alterations of existing housing facilities.

Subpart C—Indian Housing Plan (IHP)

Subpart C would set forth the regulatory requirements concerning the preparation, submission, and review of an Indian tribe's IHP. Although HUD encourages readers to familiarize themselves with all of the provisions of subpart C, it wishes to highlight the following sections contained in this subpart:

Section 1000.214. This section provides that there are no separate IHP requirements for small Indian tribes. The IHP requirements set forth in subpart C are minimal. Further, HUD has general authority under section 101 of NAHASDA to waive IHP requirements when an Indian tribe cannot comply with IHP requirements due to circumstances beyond its control. The waiver authority under section 101 provides flexibility to address the needs of every Indian tribe, including small Indian tribes. The original regulatory language for § 1000.214 developed by the Committee referred to the Secretary's authority under section 101 to waive IHP requirements for an "Indian tribe or TDHE." HUD has revised § 1000.214 to clarify that the section 101 waiver provision applies only to Indian tribes.

Section 1000.216. Section 102(c)(5) of NAHASDA requires that a recipient include certain certifications of compliance in its IHP. Among other certifications, the recipient must certify that it will comply with title II of the Civil Rights Act of 1968 in carrying out NAHASDA, to the extent that title II is applicable, and other applicable Federal

statutes. Section 101(b)(2) of NAHASDA permits HUD to waive these certification requirements if HUD determines that an Indian tribe has not complied or cannot comply with the certification requirements due to circumstances beyond the control of the Indian tribe. Section 1000.216 cross-references to this statutory provision. HUD has added a sentence to the regulatory text adopted by the Committee which clarifies that although HUD may waive the certification requirement, the recipient must still comply with the nondiscrimination requirements listed in § 1000.12.

Section 1000.226. Section 1000.226 of this proposed rule sets forth a non-exclusive list of eligible administrative and planning expenses under the IHBG program. HUD has made two revisions to the list developed by the Committee. First, HUD has removed staff and overhead costs directly related to carrying out affordable housing activities from the list of eligible expenses. These costs do not constitute administrative and planning expenses. Additionally, HUD has amended the list by adding the expenses related to the collection of data necessary to challenge the data used in the IHBG formula. This addition reflects the language of § 1000.320(a), which provides that the collection of data for this purpose is an allowable cost for IHBG funds.

Section 101(h) of NAHASDA requires that HUD authorize, by regulation, each recipient to use a percentage of its NAHASDA grant amounts for administrative and planning expenses relating to carrying out NAHASDA and activities assisted with such amounts. This proposed rule, however, does not set forth such a percentage. HUD is considering the appropriate percentage which it is statutorily required to establish at the final rule stage.

Section 1000.228. Section 101(c) of NAHASDA prohibits HUD from awarding NAHASDA grant funds to a recipient unless the governing body of the locality within which any affordable housing to be assisted with grant amounts will be situated has entered into a local cooperation agreement with the recipient. Section 1000.228 of this proposed rule provides that the requirement for a local cooperation agreement "applies to assistance of rental and lease-purchase homeownership units under the 1937 Act or NAHASDA which are owned by the Indian tribe or TDHE." HUD has revised the regulatory language developed by the Committee by using the word "assistance" rather than "development." This change clarifies

that section 101(c) covers all assistance, and not just development.

HUD also notes that a cooperation agreement is not required in those cases where the affordable housing will be located on an Indian reservation and the Indian tribe is the recipient, since a tribal government could not enter into an agreement with itself.

Section 1000.230. Section 101(d)(1) of NAHASDA requires that affordable housing assisted with NAHASDA grant amounts be exempt from all real or personal property taxes levied or imposed by any State, tribe, city, county, or other political subdivision. Section 1000.230 of this proposed rule provides that the tax-exemption requirement "applies only to assistance of rental and lease-purchase homeownership units under the 1937 Act or NAHASDA which are owned by an Indian tribe or TDHE." As is the case with § 1000.228, HUD has revised § 1000.230 by substituting the word "development" with the word "assistance." This revision clarifies that section 101(d)(1) applies to all assistance of rental and lease-purchase homeownership units.

Subpart D—Allocation Formula

Subpart D would implement title III of NAHASDA. Specifically, it would establish the components, definitions, and data sources used in the NAHASDA block grant formula. The allocation formula is set forth in an appendix to this proposed rule. Although the formula is currently set forth in an appendix, it may be incorporated in the regulatory text at the final rule stage.

Subpart E—Federal Guarantees for Financing of Tribal Housing Activities

Subpart E would describe the regulatory requirements necessary for the implementation of title VI of NAHASDA. This subpart would establish the terms and conditions by which HUD will guarantee the obligations issued by an Indian tribe or TDHE for the purposes of financing affordable housing activities.

Subpart E does not contain a provision setting forth the requirements for eligible lenders. HUD believes that the establishment of lender eligibility requirements will help to ensure the stability and integrity of the title VI loan guarantee program. HUD proposes the use of the lender eligibility criteria used in the Indian loan guarantee program authorized by section 184 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) (currently codified at 24 CFR part 955). The section 184 program has been highly successful in

providing access to sources of private financing to Indian families and Indian housing authorities who otherwise could not acquire housing financing because of the unique legal status of Indian trust land. Accordingly, HUD believes the section 184 lender eligibility requirements provide a good model for loan guarantees under title VI of NAHASDA. HUD invites public comment on the proposed lender eligibility criteria. The regulatory provision proposed by HUD would read as follows:

Who Are Eligible Lenders Under This Subpart?

The loan shall be made only by a lender approved by and meeting qualifications established in this subpart, except that loans otherwise insured or guaranteed by any agency of the Federal Government, or made by an organization of Indians from amounts borrowed from the United States shall not be eligible for guarantee under this part. The following lenders are deemed to be approved under this part:

- (a) Any mortgagee approved by HUD for participation in the single family mortgage insurance program under title II of the National Housing Act.
- (b) Any lender whose housing loans under chapter 37 of title 38, United States Code are automatically guaranteed pursuant to section 1802(d) of such title.
- (c) Any lender approved by the Department of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949.
- (d) Any other lender that is supervised, approved, regulated, or insured by any agency of the Federal Government.

HUD encourages readers to familiarize themselves with all of the provisions of subpart E; however, it wishes to highlight the following section contained in this subpart:

Section 1000.408. This section sets forth the conditions which HUD will prescribe when providing a guarantee for notes or other obligations issued by an Indian tribe. The regulatory language developed by the Committee would have authorized a repayment period in excess of twenty years if the period was commercially reasonable or was an industry standard. HUD has revised § 1000.408 to provide that the repayment period may not exceed twenty years. This change is based on HUD's legal interpretation of section 601(c) of NAHASDA which provides that HUD "may not deny a guarantee under [title VI of NAHASDA] on the basis of the proposed repayment period for the note or other obligation unless the period is more than 20 years or the Secretary determines that the period causes the guarantee to constitute an unacceptable financial risk." HUD has determined that the statutory language

of section 601(c) prohibits a repayment period of greater than 20 years.

Subpart F—Recipient Monitoring, Oversight and Accountability

Subpart F would implement title IV of NAHASDA. Among other topics, this subpart would address monitoring of compliance, performance reports, HUD and tribal review, audits, and remedies for noncompliance. Sections 1000.504 and 1000.524 of this subpart discuss performance measures. The newness of the IHBG program makes it difficult to establish detailed performance objectives. As the IHBG program evolves, and greater programmatic experience is developed, it will be possible to set forth the necessary performance measurements with greater clarity and detail.

Although HUD encourages readers to familiarize themselves with all of the provisions of subpart F, it wishes to highlight the following sections contained in this subpart:

Section 1000.502. This section describes the monitoring responsibilities of the recipient, the grant beneficiary and HUD under NAHASDA. HUD has revised the language adopted by the Committee to reference the periodic reviews required under the applicable nondiscrimination requirements set forth in § 1000.12 (See § 1000.502(c)).

Section 1000.508. This section provides that if the recipient's monitoring activities identify programmatic concerns, it must take one of several specified corrective actions. As originally adopted by the Committee, this section listed the actions the recipient "may" take to remedy identified concerns. HUD has strengthened this language to specify that a recipient is required to take one of the listed remedial actions.

Section 1000.510. This section sets forth the Indian tribe's responsibility if the tribal monitoring identifies compliance concerns. The language adopted by the Committee provided that "[t]he Indian tribe should ensure that appropriate corrective action is taken." HUD has strengthened and clarified this provision by revising it to read: "The Indian tribe's responsibility is to ensure that appropriate corrective action is taken."

Section 1000.526. This section lists the types of information HUD may use in conducting a performance review of the recipient. HUD has expanded the list adopted by the Committee to provide that HUD may also consider "any other relevant information" (see § 1000.526(i)).

Section 1000.528. This language in this section is closely modelled on section 405(c) of NAHASDA. Specifically, § 1000.528 provides that HUD may make appropriate adjustments in the amount of the annual grants under NAHASDA in accordance with the finding of HUD pursuant to reviews and audits under section 405 of NAHASDA. HUD may adjust, reduce, or withdraw grant amounts, or take other action as appropriate in accordance with the reviews and audits, except that grant amounts already expended on affordable housing activities may not be recaptured or deducted from future assistance provided on behalf of an Indian tribe.

HUD added § 1000.528 subsequent to the completion of the negotiated rulemaking meetings. Accordingly, the Committee did not have the opportunity to approve the language of § 1000.528. HUD believes the addition of this provision is necessary to provide Indian tribes with a fuller picture of the review and audit authority provided to HUD by NAHASDA. HUD emphasizes that the language of § 1000.528 is nearly identical to the language of section 405(c). Section 1000.528 does not establish any requirements or procedures in addition to those authorized under NAHASDA.

Section 1000.532. This section sets forth the hearing requirements that will be used under NAHASDA. HUD has revised the language adopted by the Committee to clarify that for hearings under section 504 of the Rehabilitation Act of 1973 or the Age Discrimination Act of 1975, the procedures in 24 CFR part 180 must be used.

Section 1000.538. This section describes the recipient audits required under NAHASDA. Specifically, § 1000.538 provides that a recipient must comply with the requirements of the Single Audit Act which requires annual audits of recipients that expend Federal funds equal to or in excess of \$300,000. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

V. Nonconsensus Provisions and Rationale

The Committee was unable to reach consensus on five issues. On four of the issues, HUD and tribal representatives disagreed on proposed regulatory language. These issues involve legal determinations which must be made by HUD. In the case of the allocation formula, tribal representatives could not reach consensus on the use of a performance variable. The following

section of the preamble summarizes these issues and presents the different positions. The summaries were drafted by proponents of the position on the Drafting Coordination Workgroup.

1. Issue: Indian Preference for Procurement

Is one time HUD approval necessary for alternative Indian Preference methods for procurement? The Committee drafted a proposed regulatory provision on this issue which was not approved by the Committee. The proposed provision is reproduced below.

Tribal Position: The tribes believe that a certification of compliance with the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) is sufficient to satisfy the requirements for alternative Indian Preference methods.

HUD's Position: HUD approval for alternative Indian Preference methods is intended to ensure that the minimum procurement requirements of 24 CFR 85.36 are met in the implementation of alternative methods of providing Indian Preference.

The proposed regulatory provision which was *not* approved reads:

What Indian Preference Requirements Are Applicable?

(a) **Applicability.** HUD has determined that grants under this part are subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b). Section 7(b) provides that any contract, subcontract, grant or subgrant pursuant to an act authorizing grants to Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible:

(1) Preference and opportunities for training and employment shall be given to Indians, and

(2) Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452).

(b) **Definitions.**

(1) The Indian Self-Determination and Education Assistance Act defines "Indian" to mean a person who is a member of an Indian tribe and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community including any Alaska Native village or regional or village urban corporation as defined or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(2) In section 3 of the Indian Financing Act of 1974 "economic enterprise" is defined as any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that Indian

ownership must constitute not less than 51 percent of the enterprise. This act defines "Indian organization" to mean the governing body of any Indian tribe or entity established or recognized by such governing body.

(c) **Preference in administration of grant.** To the greatest extent feasible, preference and opportunities for training and employment in connection with the administration of grants awarded under this part shall be given to Indians.

(d) **Preference in contracting.** To the greatest extent feasible, recipients shall give preference in the award of contracts for projects funded under this part to Indian organizations and Indian-owned economic enterprises.

(1) Each recipient shall:

(i) Advertise for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or

(ii) Use a two-stage preference procedure, as follows:

(A) **Stage 1.** Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid announcement or request for proposals limited to Indian-owned firms.

(B) **Stage 2.** If responses are received from more than one Indian enterprise found to be qualified, advertise for bids or proposals limited to Indian organizations and Indian-owned economic enterprises; or

(iii) Develop, subject to HUD one-time approval, the recipient's own method of providing preference. An Indian preference policy which was previously approved by HUD for a recipient under the provisions of 24 CFR part 1003 will meet the requirements of this section.

(2) If the recipient selects a method of providing preference that results in fewer than two responsible qualified organizations or enterprises submitting a statement of intent, a bid or a proposal to perform the contract at a reasonable cost, then the recipient shall:

(i) Re-advertise the contract, using any of the methods described in paragraph (d)(1) of this section; or

(ii) Re-advertise the contract without limiting the advertisement for bids or proposals to Indian organizations and Indian-owned economic enterprises; or

(iii) If one approvable bid or proposal is received, request Area ONAP review and approval of the proposed contract and related procurement documents, in accordance with 24 CFR 85.36, in order to award the contract to the single bidder or offeror.

(3) Procurements that are within the dollar limitations established for small purchases under 24 CFR 85.36 need not follow the formal bid or proposal procedures of paragraph (d) of this section, since these procurements are governed by the small purchase procedures of 24 CFR 85.36. However, a recipient's small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

(4) All preferences shall be publicly announced in the advertisement and bidding or proposal solicitation documents and the bidding and proposal documents.

(5) A recipient, at its discretion, may require information of prospective

contractors seeking to qualify as Indian organizations or Indian-owned economic enterprises. Recipients may require prospective contractors to include the following information before submitting a bid or proposal, or at the time of submission:

(i) Evidence showing fully the extent of Indian ownership and interest;

(ii) Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest; and

(iii) Evidence sufficient to demonstrate to the satisfaction of the recipient that the prospective contractor has the technical, administrative, and financial capability to perform contract work of the size and type involved.

(6) The recipient shall incorporate the following clause (referred to as the Section 7(b) clause) in each contract awarded in connection with a project funded under this part:

(i) The work to be performed under this contract is on a project subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) (Indian Act). Section 7(b) requires that to the greatest extent feasible (A) preferences and opportunities for training and employment shall be given to Indians and (B) preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(ii) The parties to this contract shall comply with the provisions of Section 7(b) of the Indian Act.

(iii) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians.

(iv) The contractor shall include this Section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the recipient, take appropriate action pursuant to the subcontract upon a finding by the recipient or HUD that the subcontractor has violated the Section 7(b) clause of the Indian Act.

(e) **Complaint procedures.** The following complaint procedures are applicable to complaints arising out of any of the methods of providing for Indian preference contained in this part, including alternate methods enacted and approved in a manner described in this section.

(1) Each complaint shall be in writing, signed, and filed with the recipient.

(2) A complaint must be filed with the recipient no later than 20 calendar days from the date of the action (or omission) upon which the complaint is based.

(3) Upon receipt of a complaint, the recipient shall promptly stamp the date and time of receipt upon the complaint, and immediately acknowledge its receipt.

(4) Within 20 calendar days of receipt of a complaint, the recipient shall either meet, or communicate by mail or telephone, with

the complainant in an effort to resolve the matter. The recipient shall make a determination on a complaint and notify the complainant, in writing, within 30 calendar days of the submittal of the complaint to the recipient. The decision of the recipient shall constitute final administrative action on the complaint.

2. Issue: Interest Income

Can interest income earned on advances of grant funds be retained by a recipient?

Tribal Position: For the following reasons, the tribal position is that recipients can retain interest income earned on advances of NAHASDA grant funds to be used for affordable housing activities:

(a) Under Public Law 93-638 self-determination contracts and self-governance compacts, federal policy allows tribes to receive lump-sum distributions for their programs and to keep any interest they earn on such funds before expending the funds on their programs. The Congress directed through NAHASDA that "Federal assistance to meet these responsibilities [federal housing responsibilities to Indians] should be provided in a manner that recognizes the right of Indian self-determination and tribal self-governance by making such assistance available directly to the Indian tribes or TDHEs under authorities similar to those accorded Indian tribes in Public Law 93-638 (25 U.S.C. 450 et seq.)" (NAHASDA section 2(7)—Congressional Findings). The tribal representatives believe that this language authorizes HUD to make NAHASDA grant amounts available to recipients in lump-sum distributions and that recipients can then keep any interest earned on this money before the recipient expends the money on eligible affordable housing activities.

(b) The tribal representatives also believe that NAHASDA expressly authorizes recipients to invest grant amounts and retain any interest. NAHASDA states: "A recipient may invest grant amounts for the purposes of carrying out affordable housing activities in investment securities and other obligations as approved by the Secretary" (NAHASDA section 204(b)).

HUD's Position: HUD believes that the Congressional findings in NAHASDA do not overcome the longstanding opinions of the Comptroller General that recipients may not augment appropriation amounts by earning interest on grant funds pending disbursement for a program purpose and that interest earned on grant advances belongs to the Federal Government. A more explicit statutory provision is needed which authorizes the recipient

to draw down grant funds in a lump sum and to retain any interest earned.

HUD construes section 204(b) of NAHASDA consistent with the above stated opinions of the Comptroller General. Accordingly, the statute permits recipients to invest grant amounts for the purposes of carrying out affordable housing activities, but this does not permit recipients to invest grant funds solely for the purpose of earning interest to augment the grant amount.

A workgroup of the Committee developed the following definition of "Program Income" but HUD could not agree on the underlined language:

(1) Program income is defined as any income that is realized from the disbursements of grant amounts. Program income includes income from fees for services performed from the use of real or rental of real or personal property acquired with grant funds, from the sale of commodities or items developed, acquired, etc. with grant funds, and from payments of principal and interest on loans made with grant funds. *Program income includes interest income earned on grant funds prior to disbursement.*

(2) Any program income over the amount of \$250 per annum can be retained by a recipient provided it is used for affordable housing activities in accordance with section 202 of NAHASDA. Any program income realized that is less than \$250 per annum shall be excluded from consideration as program income. Such funds may be retained but are not classified and treated as program income.

(3) If program income is realized from an eligible activity funded with both grant funds as well as other funds, i.e., funds that are not grant funds, then the amount of program income realized will be based on a percentage calculation that represents the proportional share of funds provided for the activity generating the program income that are grant funds.

(4) Costs incident to the generation of program income shall be deducted from gross income to determine program income.

3. Issue: Reducing Grant Amounts

Should HUD be allowed to reduce, adjust, or withdraw NAHASDA grant funds without giving notice and a hearing to a recipient?

Tribal Position: Tribal representatives felt that before the Secretary takes any actions to adjust, reduce, or withdraw grant amounts the Secretary must comply with the due process requirements set forth in section 401 of NAHASDA to give a recipient reasonable notice and an opportunity for a hearing.

HUD's Position: Section 405(c) of NAHASDA expressly permits HUD to adjust, reduce, or withdraw grant amounts in accordance with HUD's

review and audits of recipients. This authority is in addition to the authority in section 401 to take actions based on the recipient's substantial noncompliance with the requirements of NAHASDA.

4. Issue: Substantial Noncompliance

How is substantial noncompliance defined under NAHASDA section 401(a) before the Secretary may terminate, reduce, or limit the availability of payments under NAHASDA or replace the TDHE?

Tribal Position: The tribal representatives proposed a definition for substantial noncompliance, as follows:

For HUD to conclude that a recipient has failed to comply substantially with any provision of NAHASDA, HUD must find:

- (a) An act or omission or series of acts or omissions; or
- (b) A pattern or practice or activities constituting willful noncompliance with the requirements under NAHASDA; or
- (c) Criminal activity; or
- (d) Such other activity or activities—by the recipient which place the housing program at sufficient risk with the primary objectives of NAHASDA to warrant HUD taking the remedial actions set forth under sections 401 and 402 of NAHASDA.

HUD's Position: HUD disagrees with the tribal representatives' proposed definition for four reasons. First, the "sufficient risk" standard may prove to be essentially rudderless, leaving to HUD the question of whether actions pose such a sufficient risk, without any clear standard. Second, the standard is limited to such risk to the primary objectives of the law, which term will not necessarily cover "any provision" of NAHASDA, as section 401 compels. Third, subjecting *any* act or omission to the "sufficient risk" standard could have the unintended effect of converting minor actions to "substantial" ones. Fourth, the test ignores the statute's emphasis on *past* noncompliance. This statutory provision, like many others in NAHASDA, is patterned after the community development block grant (CDBG) legislation at title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.). While little case law exists in this area, it is apparent that the CDBG provision in question is one which has been viewed with as much emphasis on its past nature as on substantiality (See *Kansas City v. HUD*, 861 F.2d 739 (D.C.Cir. 1988)). The proposed definition fails to take this aspect of the standard into account. HUD welcomes public comment on what would be an appropriate standard for this term or, for

that matter, whether the term should be defined in the regulation.

5. Issue: Performance Variable

Should a measure of performance be used as a variable within the allocation formula for NAHASDA Block Grant funds? This issue was not agreed to among tribal representatives.

Position Opposing the Use of a Performance Variable: Taking a stand against the use of a performance variable in the allocation formula does not mean taking a stand against quality performance; rather, it means taking a stand against the use of an unnecessary and penal method of evaluating how tribes serve their own people.

It is unnecessary because both the statute and the proposed compliance regulations already address how to deal with poor performance.

It is penal in that it disciplines a failing tribe, instead of focusing on assisting that tribe.

NAHASDA requires the development of a formula for the allocation of block grant funds based on need and maintenance of current housing stock. It does not mandate or even suggest that such a formula address an individual tribe's performance, presumably because NAHASDA itself deals adequately with the issue by requiring annual performance reports, providing for audits and monitoring, and specifying remedies for non-compliance with NAHASDA (including failure to expend monies on low-income activities).

The relief available to the Secretary allows him to make adjustments in future grant amounts, to require the repayment of misspent amounts, to seek civil remedies, and to appoint a replacement TDHE, among other things. If these remedies are not the same as the penalty imposed by the performance factor, then those who favor the performance factor essentially are opting for an additional penalty. If the remedies are the same, then by definition they are duplicative.

Those who favor a performance factor in the allocation formula skirt the fact that failure to perform to standard would absolutely result in the lowering of one tribe's subsequent allocations, thereby resulting in the raising of the allocation of other tribes whose performance was excellent. Such a position has merit at first blush, but fails in the final analysis, for Indian tribes do not need to raise themselves on the backs of their fallen brothers and sisters.

Technical assistance will be available to a tribe that performs poorly, but that is the case with or without the use of a performance variable, and the real

trigger should come before failure, not in its wake. Supporters of the performance factor argue that the penalty comes only after the first full year of performance; they neglect to mention that it can continue to come each year, year after year, with each new application for a block grant. None of us has any experience with NAHASDA or how it will affect the ability to provide quality housing assistance in the first few years, especially for the smaller tribes and newer TDHEs. To include a performance variable at this stage is premature.

A performance variable in the allocation formula is neither required nor contemplated by NAHASDA. Even without a performance variable, all tribes will be required to develop performance objectives and to describe how they intend to use their block grant funds. Even without a performance factor, HUD will not continually provide funds to a poorly performing tribe. With a performance factor many tribes will unnecessarily perform their work under greater pressure and with less of the support from their fellow tribes who will benefit from their failure. The performance variable is unnecessary and insidious and serves as just another way in which to divide tribes, just as it has divided the rulemaking committee and resulted in nonconsensus.

Position in favor of the Performance Variable: Some Committee members feel that in order for a tribe or TDHE to efficiently and effectively meet the housing needs of its constituents its performance should be quantified through tribally initiated performance objectives. Towards this end, a system that will measure the performance of a tribe or TDHE against objectives determined by each individual tribe was developed by these members and presented to the Committee for consideration. These members feel development of such objectives, provided they respect and accommodate the diversity of tribal needs, will not impose an undue burden on tribes or their TDHEs, but instead will allow them to more effectively meet the needs of their constituents. Development of such performance objectives will encourage all recipients of NAHASDA funds to clearly describe objectives and describe how they will use the limited resources made available by the Congress in a timely and businesslike manner.

Crucial to the implementation of any performance objectives and their codification in the formula allocation is a commitment to promote and develop the technical and administrative

capacity among all tribes that administer affordable housing activities. The variable must trigger the provision of technical assistance to those tribes or their TDHEs that encounter difficulty meeting the objectives they set for themselves. Towards this end, the variable is a proactive means for tribes and their TDHEs that obligates the Secretary to promote and develop greater technical and administrative capacity so that both tribes and the Department are assured NAHASDA funds will be used to provide affordable housing to deserving Native Americans.

The performance variable proposed for Committee consideration will not measure performance against tribally set objectives until the end of the year—as such it does not take effect until the second year of NAHASDA. Throughout the year, tribes would have an opportunity to update or change their objectives should events occur that are beyond their control. The performance variable only reduces funding in the following year to those tribes or TDHEs that fail to accomplish what they said they would accomplish and then only if they fail to meet several of their objectives set for the year.

While the temporary reduction in funds was construed by many Committee members as a punitive measure, the proponents of the performance variable feel it addresses a broader reality facing Indian housing—continued provision of funds to a poorly performing entity is not an efficient use of limited appropriations, poorly performing recipients do not put as many people in housing as could otherwise be done, and the current political climate will not continue to subsidize poorly run programs that will not or do not use appropriated funds in a timely manner for the purposes for which they were allocated. Accordingly, members supporting the incorporation of the performance variable in the allocation of NAHASDA funds feel it is imperative that tribes be the driving force that initiate measures that assure the maximum number of deserving Native Americans are provided a house to call home and the technical and administrative capacities of all tribes are increased to accomplish this objective. Rather than rely on the Department or others to establish the criteria by which tribes will perform, it is time for tribes to take the initiative and set their own high standards—the performance variable and tribally determined objectives as proposed take this important step.

VI. Items Highlighted for Comment

Public comment is invited on this proposed rule in its entirety, including those issues highlighted in this preamble. The Committee especially seeks comments on the following issues.

1. Local Cooperation Agreements and Tax Exemption Issues

Sections 101(c), (d), and (e) of NAHASDA, governing local co-operation agreements, tax exemption, and user fees proved to be problematic, and the statutory requirements were generally agreed to be inappropriate and unreasonable in the context of a formula block grant program. The Committee's tribal caucus approved and forwarded to the Congress a technical amendment intended to deal with the problems. However, in the event that the Congress does not act on this amendment, potential recipients should be aware of the following issues:

(a) How to handle situations in which local governing bodies refuse to enter into local cooperation agreements with recipients;

(b) How to handle payments where more than one local governing body provides services;

(c) Should there be a limit on assistance to a unit or individual below which the requirements of this section should not apply; and

(d) How to deal with local governing bodies that fail to comply with their cooperation agreements. Should there be a certification by the recipient each year that the local governing body has complied with the certification agreement?

HUD is interpreting the statutory provisions for local cooperation agreements, tax exemption, and user fees in the context of the long-standing history of the requirements in the 1937 Act. Accordingly, the applicability of these provisions is limited in the regulations to rental housing (including homebuyer programs for lease-purchase of homes) owned by the Indian tribe or TDHE.

2. Labor Standards of NAHASDA

NAHASDA requires prevailing wage rates determined under the Davis-Bacon Act (40 U.S.C. 276a-276a-5) to be paid to laborers and mechanics employed in the development of affordable housing projects. NAHASDA also requires prevailing wages determined by HUD to be paid to maintenance laborers and mechanics employed in the operation, and to architects, technical engineers, draftsmen and technicians employed in the development of such projects. Some Committee members felt that applying

prevailing wage standards to all development and maintenance assisted in any way by NAHASDA is not practical or reasonable and that some minimum exemption is needed. Placing these requirements on small development and maintenance activities and certain types of projects leveraged with other funds and with other owners would make many such activities infeasible. Many committee members also felt that in accordance with the Congressional findings of NAHASDA, Indian tribes should have the right to apply their own wage standards or Tribal Employment Rights Office (TERO) standards in an effort to encourage tribal employment and that those should supersede Davis-Bacon and HUD wage rates. Since Davis-Bacon and HUD rates are a statutory requirement, the Congress must act to address or remove this provision.

3. Formula Used to Allocate NAHASDA Block Grant Funds

The Committee encourages comment on the following two issues—(a) whether or not the definition of “formula area” accurately reflects the geography that most tribes serve; and (b) how to develop a better data source than the U.S. Census that is uniformly and consistently collected throughout Indian areas for purposes of future formula allocations.

Although not to be commented on in respect to the proposed rule, tribes should be aware that their individual allocations under the Needs component of the formula are based on two primary pieces of information: (a) Geography—HUD will inform each tribe of the geography being used for its “formula area” so that tribes may correct or challenge the geographic definition for their area; and (b) data for Native Americans living in the “formula area”—the U.S. Census is known to have made an undercount, each tribe should review the data for its area (provided by HUD) to determine if it wishes to challenge the Census data as allowed under the proposed rule.

4. Formula Set-Aside for Emergency and Disaster Relief

Some Committee members felt it was important that an emergency and disaster relief fund be established with a portion of the Indian Housing Block Grant funds. The initial proposal was that the fund be capitalized at \$10 million in its first year and that it be replenished in future years such that it begins each year with a balance of \$10 million. Other Committee members suggested that the fund should address only disaster relief and that each Tribe

or TDHE develop its own reserves for emergency circumstances. The Committee is requesting comments on (a) whether or not an emergency and/or disaster relief fund should be developed and (b) if so, how it should be administered.

5. When May NAHASDA Block Grant Funds be Drawn-Down?

The Committee held informal discussions about whether NAHASDA grant amounts will be drawn-down in lump-sum payments or whether they will be drawn-down as the funds are due to be spent by a recipient. Tribal leaders expressed the view that grant amounts should be distributed in lump-sum up-front distributions so that recipients can invest the grant amounts and earn and retain interest on the funds as tribes do in Public Law 93-638 self-determination contracts and self-governance compacts. Lump-sum distributions are also consistent with the Congressional findings in NAHASDA. As set forth in section V.2. of this preamble (nonconsensus issue regarding interest income), HUD has determined that NAHASDA does not authorize the recipient to drawdown grant funds in a lump sum.

6. Applicability of Section 3 of the Housing and Urban Development Act of 1968 and the Lead Based Paint Requirements of 24 CFR Part 35

Tribal members expressed strong disagreement of the applicability of these laws on the basis of their burdensome reporting requirements or high compliance costs. Tribal members believed that compliance with Indian preference requirements under NAHASDA and its regulations should also be deemed as meeting the requirements of section 3 requiring a preference for low and very low-income persons. HUD does not agree with this tribal position. The Committee requested that HUD look at how the section 3 and lead based paint requirements would be applied to the IHBG program and whether NAHASDA's lead based paint requirements would be the same as they are for the HOME program.

HUD's current regulations setting forth its section 3 requirements (24 CFR part 135) and lead-based paint hazard requirements (24 CFR part 35) were published prior to the enactment of NAHASDA. HUD is currently developing final rules revising 24 CFR parts 35 and 135. HUD will address the impact of its section 3 and lead-based paint regulatory requirements on Native American housing assistance, especially in light of the changes made by

NAHASDA, in the development of the final rules.

7. The Applicability of 24 CFR Part 85—Uniform Administrative Requirements for Grants

The Committee decided that some portions of 24 CFR part 85 may not be applicable to the IHBG program. At the conclusion of the comment period, the Committee will review the sections of part 85 and make a determination as to which of the sections will apply. The public is encouraged to submit comments on this issue to assist the Committee in their determination.

8. Rents and Utilities

The Committee decided to give flexibility to recipients to determine whether or not rent includes utilities. HUD believes this implementation of NAHASDA is legally permissible, but notes that this position is a departure from the long-standing HUD policy of including utilities in rents.

VII. Reorganization of Existing Indian Housing Regulations

In addition to establishing a new 24 CFR part 1000, this rule proposes to make several conforming amendments to HUD's existing Indian housing regulations. For example, this proposed rule would remove 24 CFR part 950 from the Code of Federal Regulations. Part 950 sets forth the regulatory requirements for the "old" system of funding which expires on September 30, 1997. Accordingly, the removal of part 950 is necessary to ensure that title 24 does not contain outdated regulations.

This proposed rule would also redesignate 24 CFR part 953 (Community Development Block Grants for Indian Tribes and Alaskan Native Villages) and 24 CFR part 955 (Loan Guarantees for Indian Housing) as 24 CFR parts 1003 and 1005, respectively. These redesignations would consolidate HUD's Indian housing regulations in the

"1000 series" of title 24, and assist program participants by presenting uniformity. In addition to the changes in designation, this proposes to make amendments to the regulations currently set forth in part 955. These revisions will reflect the amendments made by NAHASDA to section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1515z-13a).

As a result of these redesignations, several conforming amendments must be made at the final rule stage to other HUD regulations that cross-reference to 24 CFR parts 950, 953, and 955.

VIII. Justification for Reduced Comment Period

It is HUD's policy generally to afford the public not less than sixty days for submission of comments on its notices of proposed rulemaking (24 CFR 10.1). It was determined that it would not be practicable to provide a public comment period greater than 45 calendar days. As noted above, section 106(b)(1) of NAHASDA requires that HUD issue final regulations implementing NAHASDA by September 1, 1997. In developing a schedule for completing its work, the Committee has attempted to strike a balance between the need for public input in the regulatory implementation of NAHASDA, and the necessity of meeting the statutory publication deadline. Given the number and complexity of negotiated rulemaking issues, it was determined that it would not be possible to issue proposed regulations before today. In order to permit the publication of a final rule by September 1, 1997, and provide the Committee with sufficient time to review and address public comments on this proposed rule, HUD requests that comments be submitted by August 18, 1997. The Committee believes that this 45-day comment period will provide interested persons with sufficient time to develop and submit their comments.

The Committee recognizes the value and necessity of public comment in the development of final regulations implementing NAHASDA and welcomes comments on this proposed rule. All comments will be addressed in the final rule. Further, the Committee has sought public input throughout the negotiated rulemaking process. All Committee meetings were announced in the **Federal Register** and were open to the public without advance registration. Members of the public were also invited to make statements during the negotiated rulemaking meetings and to submit written statements for the Committee's consideration.

The Committee also notes that the negotiated rulemaking process provided for the development of proposed regulations with the active participation of Indian tribes. Forty-eight of the fifty-eight Committee members were representatives of geographically diverse small, medium, and large Indian tribes. These Committee members represented tribal concerns and interests in the development of regulations implementing NAHASDA and the proposals contained in this rule reflect the consensus decisions of the Committee.

IX. Findings and Certifications

Paperwork Reduction Act of 1995

(a) The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(b) Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

Type of collection	Proposed section of 24 CFR affected	Number of respondents	Frequency of response	Est. avg. response time (hrs.)	Annual burden hrs.
Real property acquisition requirements; information a recipient must provide an owner.	1000.14 (a)(1) and (a)(2).	400	1	24	9,600
Advance written notice to residential tenants and homebuyers.	1000.14(c)(2)	400	1	.30	9,000
Maintenance of Uniform Relocation Act records	1000.14(f)(3)	400	1	.15	60
Maintenance of conflict of interest records	1000.36	400	1	.15	60
HUD approval for model activities and non-Indian families.	1000.108 and 1000.118(b).	400	1	16	6,400
Income verification and document maintenance	1000.128	400	1	40	16,000
Notification to HUD of demolition/disposition	1000.134(b)	400	1	6	2,400
Obtaining and maintenance of criminal conviction information.	1000.154	400	1	24	9,600
IHP submission requirements	1000.212, 1000.142, 1000.222.	400	1	120	42,000

Type of collection	Proposed section of 24 CFR affected	Number of respondents	Frequency of response	Est. avg. response time (hrs.)	Annual burden hrs.
Appeal of HUD determination regarding non-compliance or IHP modification.	1000.224	400	1	16	6,400
Certification and document maintenance for title VI of NAHASDA.	1000.406	400	1	1	400
Demonstration requirement for multiple guarantees	1000.410	400	1	3	1,200
Demonstration requirement for financial capacity	1000.412	400	1	3	1,200
Procedures and requirements for title VI loan guarantee applications.	1000.420, 1000.422.	400	1	20	8,000
Amendment procedure for approved guarantees	1000.430	400	1	1	400
Monitoring responsibility under NAHASDA	1000.502(a), 1000.512, 1000.538.	400	1	30	12,000
Public comment on performance reports	1000.518	400	1	3	1,200
Program records maintenance	1000.548	400	1	1	400
Certification and document maintenance for lack of financial market access requirement in section 184 loan guarantees.	1005.105(f)	400	1	1	400
Section 184 certification of compliance with tribal laws ..	1005.112	400	1	.15	42

Total Burden, 126,762.

(c) In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

(d) OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not effect the deadline for the public to comment on the proposed rule. Comments on the paperwork collection requirements contained in this rule must be submitted to those persons indicated in the **ADDRESSES** section of this preamble.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50,

implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule have no federalism implications, and that the policies are not subject to review under the Order.

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

This rule will not pose an environmental health risk or safety risk on children.

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.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the

Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the final rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410-0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects

24 CFR Part 950

Aged, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 953

Alaska, Community development block grants, Grant programs—housing and community development, Indians, Reporting and recordkeeping requirements.

24 CFR Part 955

Indians, Loan programs—Indians, Reporting and recordkeeping requirements.

24 CFR Part 1000

Aged, Community development block grants, Grant programs—housing and community development, Grant

programs—Indians, Indians, Individuals with disabilities, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 1003

Alaska, Community development block grants, Grant programs—housing and community development, Indians, Reporting and recordkeeping requirements.

24 CFR Part 1005

Indians, Loan programs—Indians, Reporting and recordkeeping requirements.

Accordingly, for the reasons described above, in title 24 of the Code of Federal Regulations, Chapter IX is proposed to be amended as follows:

PART 950—[REMOVED]

1. Part 950 is removed.

PART 953 [REDESIGNATED]

2. Part 953 is redesignated as part 1003.
3. Part 1000 is added to read as follows:

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

Subpart A—General

Sec.

- 1000.1 What is the applicability and scope of these regulations?
- 1000.2 What are the Guiding Principles in the implementation of NAHASDA?
- 1000.4 What is the objective of the IHBG program?
- 1000.6 What is the nature of the IHBG program?
- 1000.8 May provisions of these regulations be waived?
- 1000.10 What definitions apply in these regulations?
- 1000.12 What nondiscrimination requirements are applicable?
- 1000.14 What relocation and real property acquisition policies are applicable?
- 1000.16 What labor standards are applicable?
- 1000.18 What environmental review requirements apply?
- 1000.20 Is an Indian tribe required to assume environmental review responsibilities?
- 1000.22 Are the costs of an environmental review an eligible cost?
- 1000.24 If an Indian tribe assumes environmental review responsibility, how will HUD assist the Indian tribe in performing the environmental review?
- 1000.26 What are the administrative requirements under NAHASDA?
- 1000.28 May a self-governance Indian tribe be exempted from the applicability of 24 CFR part 85?
- 1000.30 What prohibitions regarding conflict of interest are applicable?

- 1000.32 May exceptions be made to the conflict of interest provisions?
- 1000.34 What factors must be considered in making an exception to the conflict of interest provisions?
- 1000.36 How long must a recipient retain records regarding exceptions made to the conflict of interest provisions?
- 1000.38 What flood insurance requirements are applicable?
- 1000.40 Do lead-based paint poisoning prevention requirements apply to affordable housing activities under NAHASDA?
- 1000.42 Are the requirements of section 3 of the Housing and Urban Development Act of 1968 applicable?
- 1000.44 What prohibitions on the use of debarred, suspended or ineligible contractors apply?
- 1000.46 Do drug-free workplace requirements apply?

Subpart B—Affordable Housing Activities

- 1000.101 What is affordable housing?
- 1000.102 What are eligible affordable housing activities?
- 1000.104 What families are eligible for affordable housing activities?
- 1000.106 What activities under title II of NAHASDA require HUD approval?
- 1000.108 How is HUD approval obtained by a recipient for housing for non low-income Indian families and model activities?
- 1000.110 How will HUD determine whether to approve model housing activities or other housing programs?
- 1000.112 How long does HUD have to review and act on a model housing activity or other housing program proposal?
- 1000.114 What should HUD do before declining a model housing activity or other housing program?
- 1000.116 What recourse does a recipient have if HUD disapproves a model housing activity or other program?
- 1000.118 Under what conditions may non low-income Indian families participate in the program?
- 1000.120 May a recipient use Indian preference or tribal preference in selecting families for housing assistance?
- 1000.122 May NAHASDA grant funds be used as matching funds to obtain any leverage funding, including any federal or state program and still be considered an affordable housing activity?
- 1000.124 What is the maximum and minimum rent or homebuyer payment a recipient can charge a low-income rental tenant or homebuyer?
- 1000.126 May a recipient charge flat or income-adjusted rents?
- 1000.128 Is income verification required for assistance under NAHASDA?
- 1000.130 May a recipient charge a non low-income family rents or homebuyer payments which are more than 30% of the family's adjusted income?
- 1000.132 Are utilities considered a part of rent or homebuyer payments?

- 1000.134 When may a recipient (or entity funded by a recipient) demolish or dispose of Indian housing units owned or operated pursuant to an ACC?
- 1000.136 What insurance requirements apply to housing units assisted with NAHASDA grants?
- 1000.138 What constitutes adequate insurance?
- 1000.140 May a recipient use grant funds to purchase insurance for privately owned housing to protect NAHASDA grant amounts spent on that housing?
- 1000.142 What is the "useful life" during which low-income rental housing and low-income homebuyer housing must remain affordable as required in sections 205(a)(2) and 209 of NAHASDA?
- 1000.144 Are Mutual Help homes developed before NAHASDA subject to the useful life provisions of section 205(a)(2)?
- 1000.146 Is a homebuyer required to remain low-income throughout the term of their participation in a housing program funded under NAHASDA?
- 1000.148 What law will an owner or manager follow in providing adequate written notice of eviction or termination of a lease?
- 1000.150 How many Indian tribes and TDHEs receive criminal conviction information on adult applicants or tenants?
- 1000.152 How is the recipient to use criminal conviction information?
- 1000.154 How is the recipient to keep criminal conviction information confidential?
- 1000.156 What housing development cost limits are applicable to ensure modest housing construction under NAHASDA?

Subpart C—Indian Housing Plan (IHP)

- 1000.201 How are funds made available under NAHASDA?
- 1000.202 Who are eligible recipients?
- 1000.204 How does an Indian tribe designate itself as a recipient of the grant?
- 1000.206 How is a TDHE designated?
- 1000.208 Is submission of an IHP required?
- 1000.210 Who prepares and submits an IHP?
- 1000.212 What are the minimum requirements for the IHP?
- 1000.214 Are there separate IHP requirements for small Indian tribes?
- 1000.216 Can the certification requirements of section 102(c)(5) of NAHASDA be waived by HUD?
- 1000.218 If HUD changes its IHP format will Indian tribes be involved?
- 1000.220 What is the process for HUD review of IHPs and IHP amendments?
- 1000.222 Can an Indian tribe or TDHE amend its IHP?
- 1000.224 Can HUD's determination regarding the non-compliance of an IHP or a modification to an IHP be appealed?
- 1000.226 What are eligible administrative and planning expenses?
- 1000.228 When is a local cooperation agreement required for affordable housing activities?

1000.230 When does the requirement for exemption from taxation apply to affordable housing activities?

Subpart D—Allocation Formula

1000.301 What is the purpose of the IHBG formula?

1000.302 What are the definitions applicable for the IHBG formula?

1000.304 May the IHBG formula be modified?

1000.306 Who can make modifications to the IHBG formula?

1000.308 What are the components of the IHBG formula?

1000.310 How is the need component developed?

1000.312 What if a formula area is served by more than one Indian tribe?

1000.314 What are data sources for the need variables?

1000.316 May Indian tribes, TDHEs, or HUD challenge the data from the U.S. Decennial Census or provide an alternative source of data?

1000.318 Will data used by HUD to determine an Indian tribe's or TDHE's formula allocation be provided to the Indian tribe or TDHE before the allocation?

1000.320 How may an Indian tribe, TDHE, or HUD challenge data?

1000.322 How is the need component adjusted for local area costs?

1000.324 What is current assisted stock?

1000.326 What is formula current assisted stock?

1000.328 How is the Formula Current Assisted Stock (FCAS) Component developed?

1000.330 How is the Section 8 criteria developed?

1000.332 How long will Section 8 units be counted for purposes of the formula?

1000.334 How will the formula allocation be affected if an Indian tribe or TDHE removes some or all of its Formula Current Assisted Stock from inventory?

1000.336 Do units under Formula Current Assisted Stock ever expire from inventory used for the formula?

1000.338 How are Formula Current Assisted Stock and Section 8 adjusted for local area costs?

1000.340 IHA financed units included in the determination of Formula Current Assisted Stock?

Subpart E—Federal Guarantees for Financing of Tribal Housing Activities

1000.401 What terms are used throughout this subpart?

1000.402 Are state recognized Indian tribes eligible for guarantees under title VI of NAHASDA?

1000.404 What constitutes tribal approval to issue notes or other obligations under title VI of NAHASDA?

1000.406 How does an Indian tribe or TDHE show that it has made efforts to obtain financing without a guarantee and cannot complete such financing in a timely manner?

1000.408 What conditions shall HUD prescribe when providing a guarantee for notes or other obligations issued by an Indian tribe?

1000.410 Can an issuer obtain a guarantee for more than one note or other obligation at a time?

1000.412 How is an issuer's financial capacity demonstrated?

1000.414 What is a repayment contract in a form acceptable to HUD?

1000.416 Can grant funds be used to pay costs incurred when issuing notes or other obligations?

1000.418 May grants made by HUD under section 603 of NAHASDA be used to pay net interest costs incurred when issuing notes or other obligations?

1000.420 What are the procedures for applying for loan guarantees under title VI of NAHASDA?

1000.422 What are the application requirements for guarantee assistance under title VI of NAHASDA?

1000.424 How does HUD review a guarantee application?

1000.426 For what reasons may HUD disapprove an application or approve an application for an amount less than that requested?

1000.428 When will HUD issue notice to the applicant if the application is approved at the requested or reduced amount?

1000.430 Can an amendment to an approved guarantee be made?

1000.432 How will HUD allocate the availability of loan guarantee assistance?

1000.434 How will HUD monitor the use of funds guaranteed under this subpart?

Subpart F—Recipient Monitoring, Oversight and Accountability

1000.501 Who is involved in monitoring activities under NAHASDA?

1000.502 What are the monitoring responsibilities of the recipient, the grant beneficiary and HUD under NAHASDA?

1000.504 What are the recipient performance objectives?

1000.506 If the TDHE is the recipient, must it submit its monitoring evaluation/ results to the Indian tribe?

1000.508 If the recipient monitoring identifies programmatic concerns, what happens?

1000.510 What is the Indian tribe's responsibility if the tribal monitoring identifies compliance concerns?

1000.512 Are performance reports required?

1000.514 When must the annual performance report be submitted?

1000.516 What reporting period is covered by the annual performance report?

1000.518 When must a recipient obtain public comment on its annual performance report?

1000.520 What are the purposes of HUD review?

1000.522 How will HUD give notice of on-site reviews?

1000.524 What are HUD's performance measures for the review?

1000.526 What information will HUD use for its review?

1000.528 What adjustments may HUD make in the amount of NAHASDA annual grants under section 405 of NAHASDA?

1000.530 What are remedies available for substantial noncompliance?

1000.532 What hearing procedures will be used?

1000.534 When may HUD require replacement of a TDHE?

1000.536 When does failure to comply substantially cease?

1000.538 What audits are required?

1000.540 Who is the cognizant audit agency?

1000.542 Are audit costs an eligible program expense?

1000.544 Must a copy of the recipient's audit pursuant to the Single Audit Act be submitted to HUD?

1000.546 If the TDHE is the recipient, does it have to submit a copy of its audit to the Indian tribe?

1000.548 How long must the recipient maintain program records?

1000.550 Which agencies have right of access to the recipient's records relating to activities carried out under NAHASDA?

1000.552 Does the Freedom of Information Act (FOIA) apply to recipient records?

1000.554 Does the Federal Privacy Act apply to recipient records?

Authority: 25 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

Subpart A—General

§ 1000.1 What is the applicability and scope of these regulations?

Under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) the Department of Housing and Urban Development (HUD) provides grants, loan guarantees, and technical assistance to Indian tribes and Alaska Native villages for the development and operation of low-income housing in Indian areas. The policies and procedures described in this part apply to grants to eligible recipients under the Indian Housing Block Grant (IHBG) program for Indian tribes and Alaska Native villages. This part also applies to loan guarantee assistance under title VI of NAHASDA. This part supplements the statutory requirements set forth in NAHASDA.

§ 1000.2 What are the Guiding Principles in the implementation of NAHASDA?

The Secretary shall use the following Congressional findings set forth in section 2 of NAHASDA as the guiding principles in the implementation of NAHASDA:

(a) The Federal government has a responsibility to promote the general welfare of the Nation:

(1) By using Federal resources to aid families and individuals seeking affordable homes in safe and healthy environments and, in particular,

assisting responsible, deserving citizens who cannot provide fully for themselves because of temporary circumstances or factors beyond their control;

(2) By working to ensure a thriving national economy and a strong private housing market; and

(3) By developing effective partnerships among the Federal government, state, tribal, and local governments, and private entities that allow government to accept responsibility for fostering the development of a healthy marketplace and allow families to prosper without government involvement in their day-to-day activities.

(b) There exists a unique relationship between the Government of the United States and the governments of Indian tribes and a unique Federal responsibility to Indian people;

(c) The Constitution of the United States invests the Congress with plenary power over the field of Indian affairs, and through treaties, statutes, and historical relations with Indian tribes, the United States has undertaken a unique trust responsibility to protect and support Indian tribes and Indian people.

(d) The Congress, through treaties, statutes, and the general course of dealing with Indian tribes, has assumed a trust responsibility for the protection and preservation of Indian tribes and for working with Indian tribes and their members to improve their housing conditions and socioeconomic status so that they are able to take greater responsibility for their own economic condition.

(e) Providing affordable homes in safe and healthy environments is an essential element in the special role of the United States in helping Indian tribes and their members to improve their housing conditions and socioeconomic status.

(f) The need for affordable homes in safe and healthy environments on Indian reservations, in Indian communities, and in Native Alaskan villages is acute and the Federal government should work not only to provide housing assistance, but also, to the extent practicable, to assist in the development of private housing finance mechanisms on Indian lands to achieve the goals of economic self-sufficiency and self-determination for Indian tribes and their members.

(g) Federal assistance to meet these responsibilities should be provided in a manner that recognizes the right of Indian self-determination and tribal self-governance by making such assistance directly to the Indian tribes or tribally designated entities under authorities

similar to those accorded Indian tribes in Public Law 93-638 (25 U.S.C. 450 *et seq.*)

§ 1000.4 What is the objective of the IHBG program?

The primary objective of the IHBG program is the provision of affordable, decent, safe and sanitary housing and a suitable living environment, principally for Native American and Alaskan Native persons of low-income.

§ 1000.6 What is the nature of the IHBG program?

The IHBG program is a formula grant program whereby eligible recipients of funding receive an equitable share of periodic appropriations made by the Congress, based upon formula components specified under subpart D of this part. IHBG recipients must have the administrative capacity to undertake the affordable housing activities proposed, including the systems of internal control necessary to administer these activities effectively without fraud, waste, or mismanagement.

§ 1000.8 May provisions of these regulations be waived?

Provisions of this part may be waived in accordance with 24 CFR 5.110.

§ 1000.10 What definitions apply in these regulations?

Except as noted in a particular subpart, the following definitions apply in this part:

(a) The terms "*Adjusted income*," "*Affordable housing*," "*Drug-related criminal activity*," "*Elderly families and near-elderly families*," "*Elderly person*," "*Grant beneficiary*," "*Indian*," "*Indian housing plan (IHP)*," "*Indian tribe*," "*Low-income family*," "*Median income*," "*Near-elderly persons*," "*Nonprofit*," "*Recipient*," "*Secretary*," "*State*," and "*Tribally designated housing entity (TDHE)*" are defined in section 4 of NAHASDA.

(b) In addition to the definitions set forth in paragraph (a) of this section, the following definitions apply to this part:

Affordable Housing Activities are those activities identified in section 202 of NAHASDA.

Annual Contributions Contract (ACC) means a contract under the 1937 Act between HUD and an IHA containing the terms and conditions under which HUD assists the IHA in providing decent, safe, and sanitary housing for low-income families.

Annual income. Annual income is the anticipated total income from all sources received by the family head and spouse (even if temporarily absent) and by each additional member of the family, including all net income derived

from assets, for the 12-month period following the effective date of the initial determination or reexamination of income, exclusive of certain types of income as provided in paragraph (2) of this definition.

(1) Annual income includes, but is not limited to:

(i) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(ii) The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(iii) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (1)(ii) of this definition. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate as determined by HUD;

(iv) The full amount of periodic amounts received from social security, annuities, insurance policies, retirement funds, pensions, disability, or death benefits and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (2)(xiv) of this definition):

(v) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay (except as provided in paragraph (2)(iii) of this definition);

(vi) *Welfare assistance*. If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in

accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(B) The maximum amount that the welfare assistance agency could, in fact, allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under paragraph (1)(vi)(B) of this definition shall be the amount resulting from one application of the percentage;

(vii) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling; and

(viii) All regular pay, special pay, and allowances of a member of the Armed Forces (but see paragraph (2)(vii) of this definition).

(2) Annual income does not include the following:

(i) Income from employment of children (including foster children) under the age of 18 years;

(ii) Payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated to the tenant family, who are unable to live alone);

(iii) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses (but see paragraph (1)(v) of this definition);

(iv) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(v) Income of a live-in aide;

(vi) The full amount of student financial assistance paid directly to the student or to the educational institution;

(vii) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(viii)(A) Amounts received under training programs funded by HUD;

(B) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan for Achieving Self-Support (PASS);

(C) Amounts received by a participant in other publicly assisted programs that are specifically for or in reimbursement

of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and that are made solely to allow participation in a specific program;

(D) Amounts received under a student service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by an Indian housing resident for performing a service for the IHA, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to fire patrol, hall monitoring, lawn maintenance and resident initiatives coordination. No resident may receive more than one such stipend during the same period of time.

(E) Incremental earnings and benefits resulting to any family member from the participation in qualifying state or local employment training programs (including training programs not affiliated with local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the employment training.

(ix) Temporary, nonrecurring, or sporadic income (including gifts);

(x) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(xi) Adoption assistance payments in excess of \$480 per adopted child;

(xii) The earnings and benefits to any family member resulting from the participation in a program providing employment training and supportive services in accordance with the Family Support Services Act of 1988, section 22 of the 1937 Act, or any comparable Federal, state, tribal, or local law during the exclusion period. For purposes of this paragraph (2)(xii) of this definition, the following definitions apply:

(A) Comparable Federal, state, tribal, or local law means a program providing employment training and supportive services that—

(1) Is authorized by Federal, state, tribal, or local law;

(2) Is funded by Federal, state, tribal, or local government;

(3) Is operated or administered by a public agency; and

(4) Has as its objective to assist participants in acquiring employment skills.

(B) *Exclusion period* means the period during which the family member participates in a program described in this definition, plus 18 months from the

date the family member begins the first job acquired by the family member after completion of such program that is not funded by public housing assistance under the 1937 Act. If the resident is terminated from employment with good cause, the exclusion period shall end.

(C) *Earnings and Benefits* means the incremental earnings and benefits resulting from a qualifying employment training program or subsequent job;

(xiii) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts;

(xiv) Amounts received by the family in the form of refunds or rebates under state or local law for property taxes on the dwelling unit;

(xv) Amounts paid by a state agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(xvi) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the 1937 Act. A notice is published from time to time in the **Federal Register** and distributed to recipients identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

(3) If it is not feasible to anticipate a level of income over a 12-month period, the income anticipated for a shorter period may be annualized subject to a redetermination at the end of the shorter period.

Assistant Secretary means the Assistant Secretary for Public and Indian Housing.

Department or HUD means the Department of Housing and Urban Development.

Family includes, but is not limited to, a family with or without children, an elderly family, a near-elderly family, a disabled family, a single person, as determined by the Indian tribe.

Homeless family means a family who is without safe, sanitary and affordable housing even though it may have temporary shelter provided by the community, or a family who is homeless as determined by the Indian tribe.

IHBG means Indian Housing Block Grant.

Income means annual income as defined in this subpart.

Indian Area means the area within which an Indian tribe operates or a TDHE is authorized by one or more

Indian tribes to provide assistance under NAHASDA for affordable housing. Whenever the term "jurisdiction" is used in NAHASDA it shall mean "Indian Area" except where specific reference is made to the jurisdiction of a court.

Indian Housing Authority (IHA) means an entity that:

(1) Is authorized to engage or assist in the development or operation of low-income housing for Indians under the 1937 Act; and

(2) Is established:

(i) By exercise of the power of self-government of an Indian tribe independent of state law; or

(ii) By operation of state law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

NAHASDA means the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*).

1937 Act means the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*)

Office of Native American Programs (ONAP) means the office of HUD which has been delegated authority to administer programs under this part. An "Area ONAP" is an ONAP field office.

Person with Disabilities means a person who—

(1) Has a disability as defined in section 223 of the Social Security Act;

(2) Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act;

(3) Has a physical, mental, or emotional impairment which—

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that such ability could be improved by more suitable housing conditions.

(4) The term "person with disabilities" includes persons who have the disease of acquired immunodeficiency syndrome or any condition arising from the etiologic agent for acquired immunodeficiency syndrome.

(5) Notwithstanding any other provision of law, no individual shall be considered a person with disabilities, for purposes of eligibility for housing assisted under this part, solely on the basis of any drug or alcohol dependence. The Secretary shall consult with Indian tribes and appropriate Federal agencies to implement this paragraph.

(6) For purposes of this definition, the term "physical, mental or emotional

impairment" has the same meaning as an "individual with handicaps" set forth at 24 CFR 8.3, which includes, but is not limited to:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological condition, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(iii) The term "physical, mental, or emotional impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction and alcoholism.

Total development cost. The sum of all HUD-approved costs for a project including all undertakings necessary for administration, planning, site acquisition, demolition, construction or equipment and financing (including the payment of carrying charges), and for otherwise carrying out the development of the project. The maximum total development cost excludes off-site water and sewer facilities development costs; costs normally paid for by other entities, but included in the development cost budget for the project for contracting or accounting convenience; and any donations received from public or private sources.

§ 1000.12 What nondiscrimination requirements are applicable?

(a) The requirements of the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and HUD's implementing regulations in 24 CFR part 146.

(b) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's regulations at 24 CFR part 8 apply.

(c) Title II of the Civil Rights Act of 1968 (25 U.S.C. 1301–1303), to the extent that such title is applicable, and other applicable Federal civil rights statutes. Title II provides that no Indian tribe, in exercising powers of self government, shall deny to any person within its jurisdiction equal protection of its laws or deprive any person of liberty or property without due process of law.

(d) In accordance with section 201(b)(5) of NAHASDA, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*) do not apply to actions by Indian tribes under section 201(b) of NAHASDA.

§ 1000.14 What relocation and real property acquisition policies are applicable?

The following relocation and real property acquisition policies are applicable to programs developed or operated under NAHASDA:

(a) *Real Property acquisition requirements.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B. Whenever the recipient does not have the authority to acquire the real property through condemnation, it shall:

(1) Before discussing the purchase price, inform the owner:

(i) Of the amount it believes to be the fair market value of the property. Such amount shall be based upon one or more appraisals prepared by a qualified appraiser. However, this provision does not prevent the recipient from accepting a donation or purchasing the real property at less than its fair market value.

(ii) That it will be unable to acquire the property if negotiations fail to result in an amicable agreement.

(2) Request HUD approval of the proposed acquisition price before executing a firm commitment to purchase the property if the proposed acquisition payment exceeds the fair market value. The recipient shall include with its request a copy of the appraisal(s) and a justification for the proposed acquisition payment. HUD will promptly review the proposal and inform the recipient of its approval or disapproval.

(b) *Minimize displacement.* Consistent with the other goals and objectives of this part, recipients shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(c) *Temporary relocation.* The following policies cover residential tenants and homebuyers who will not be required to move permanently but who must relocate temporarily for the project. Such residential tenants and homebuyers shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied

housing and any increase in monthly housing costs (e.g., rent/utility costs).

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and

(iv) The provisions of paragraph (c)(1) of this section.

(d) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA)(42 U.S.C. 4601-4655) and implementing regulations at 49 CFR part 24.

(e) *Appeals to the recipient.* A person who disagrees with the recipient's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the recipient.

(f) *Responsibility of recipient.* (1) The recipient shall certify that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The recipient shall ensure such compliance notwithstanding any third party's contractual obligation to the recipient to comply with the provisions cited in this paragraph.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. However, such assistance may also be paid for with funds available to the recipient from any other source.

(3) The recipient shall maintain records in sufficient detail to demonstrate compliance with this section.

(g) *Definition of displaced person.* (1) For purposes of this section, the term "displaced person" means any person (household, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently, as a direct result of rehabilitation, demolition, or acquisition for a project assisted under this part. The term "displaced person" includes, but is not limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after the submission to HUD of an IHP that is later approved.

(ii) Any person, including a person who moves before the date described in paragraph (g)(1)(i) of this section, that the recipient determines was displaced as a direct result of acquisition, rehabilitation, or demolition for the assisted project.

(iii) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the execution of the agreement between the recipient and HUD, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant-occupant's monthly rent and estimated average monthly utility costs before the agreement; or

(B) 30 percent of gross household income.

(iv) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant-occupant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable.

(v) A tenant-occupant of a dwelling who moves from the building/complex after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant-occupant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person moved into the property after the submission of the IHP to HUD, but, before signing a lease or commencing occupancy, was provided

written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" or for any assistance provided under this section as a result of the project.

(ii) The person is ineligible under 49 CFR 24.2(g)(2).

(iii) The recipient determines the person is not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project. To exclude a person on this basis, HUD must concur in that determination.

(3) A recipient may at any time ask HUD to determine whether a specific displacement is or would be covered under this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a person displaced as a direct result of rehabilitation or demolition of the real property, the term "initiation of negotiations" means the execution of the agreement covering the rehabilitation or demolition (See 49 CFR part 24).

§ 1000.16 What labor standards are applicable?

(a) As described in section 104(b) of NAHASDA, contracts and agreements for assistance, sale or lease under NAHASDA must require prevailing wage rates determined under the Davis-Bacon Act (40 U.S.C. 276a-276a-5) to be paid to laborers and mechanics employed in the development of affordable housing projects. Section 104(b) also mandates that these contracts and agreements require that prevailing wages determined by HUD shall be paid to maintenance laborers and mechanics employed in the operation, and to architects, technical engineers, draftsmen and technicians employed in the development, of such projects.

(b) The requirements in 24 CFR part 70 concerning exemptions for the use of volunteers on projects subject to Davis-Bacon and HUD-determined wage rates are applicable.

§ 1000.18 What environmental review requirements apply?

The environmental effects of each activity carried out with assistance under this part must be evaluated in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and the related authorities listed in HUD's implementing regulations at 24 CFR parts 50 and 58.

§ 1000.20 Is an Indian tribe required to assume environmental review responsibilities?

(a) No. It is an option an Indian tribe may choose. If an Indian tribe declines to assume the environmental review responsibilities, HUD will perform the environmental review in accordance with 24 CFR part 50. The timing of HUD undertaking the environmental review will be subject to the availability of resources. A HUD environmental review must be completed for any activities not excluded from review under 24 CFR 50.19(b) before a recipient may acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds to such activities with respect to the property.

(b) If an Indian tribe assumes environmental review responsibilities:

(1) Its certifying officer must certify that he/she is authorized and consents on behalf of the Indian tribe and such officer to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities of the certifying officer as set forth in section 105(c) of NAHASDA; and

(2) The Indian tribe must follow the requirements of 24 CFR part 58.

(3) No funds may be committed to a grant activity or project before the completion of the environmental review and approval of the request for release of funds and related certification required by sections 105(b) and 105(c) of NAHASDA, except as authorized by 24 CFR part 58.

§ 1000.22 Are the costs of the environmental review an eligible cost?

Yes, costs of completing the environmental review are eligible costs.

§ 1000.24 If an Indian tribe assumes environmental review responsibility, how will HUD assist the Indian tribe in performing the environmental review?

As set forth in section 105(a)(2)(B) of NAHASDA and 24 CFR 58.77, HUD will provide for monitoring of environmental reviews and will also facilitate training for the performance for such reviews by Indian tribes.

§ 1000.26 What are the administrative requirements under NAHASDA?

Except as specified in this part, the uniform administrative requirements for grants and cooperative agreements set forth in 24 CFR part 85 are applicable to grants under this part. In the event that there are conflicts between the requirements of part 85 and the requirements of this part, the requirements of this part shall govern.

§ 1000.28 May a self-governance Indian tribe be exempted from the applicability of 24 CFR part 85?

A self-governance Indian tribe may request that it be exempt from 24 CFR part 85 and instead follow its own laws, regulations, administrative requirements, standards and systems. Upon receipt of such written request, HUD shall conduct a timely review of the Indian tribe's administrative requirements, standards and systems to determine if they fulfill the fundamental purposes of 24 CFR part 85. If so, the Indian tribe will be obligated to follow its own laws, regulations and policies. If HUD determines that the Indian tribe must comply with part 85, the Indian tribe may ask for a redetermination from HUD.

§ 1000.30 What prohibitions regarding conflict of interest are applicable?

(a) *Applicability.* In the procurement of supplies, equipment, other property, construction and services by recipients and subrecipients, the conflict of interest provisions of 24 CFR 85.36 or 24 CFR 84.42 (as applicable) shall apply. In all cases not governed by 24 CFR 85.36 or 24 CFR 84.42, the provisions of this part shall apply.

(b) *Conflicts Prohibited.* No person who participates in the decision-making process or who gains inside information with regard to NAHASDA assisted activities may obtain a personal or financial interest or benefit from such activities, except for the use of NAHASDA funds to pay salaries or other related administrative costs. Such persons include anyone with an interest in any contract, subcontract or agreement or proceeds thereunder, either for themselves or others with whom they have business or family ties.

§ 1000.32 May exceptions be made to the conflict of interest provisions?

(a) Yes. HUD may make exceptions to the conflict of interest provisions set forth in § 1000.30(b) on a case-by-case basis when it determines that such an exception would further the primary objective of NAHASDA and the effective and efficient administration or implementation of the recipient's program, activity, or project.

(b) A public disclosure of the conflict must be made and a determination that the exception would not violate tribal laws on conflict of interest (or any applicable state laws) must also be made.

§ 1000.34 What factors must be considered in making an exception to the conflict of interest provisions?

The following factors must be considered.

(a) Whether undue hardship will result, either to the recipient or to the person affected, when weighed against the public interest served by avoiding the prohibited conflict. In evaluating the hardship which would result to the person affected, HUD will consider if the person is a member of a group or class of intended beneficiaries of the assisted activities and if they would receive generally the same benefits as would be provided to the group as a class.

(b) Whether the exception would provide a significant cost benefit or essential expert knowledge to the program, activity, or project which would otherwise not be available.

(c) Whether an opportunity was provided for open competitive bidding or negotiations.

(d) Any other relevant considerations.

§ 1000.36 How long must a recipient retain records regarding exceptions made to the conflict of interest provisions?

A recipient must maintain all such records for a period of at least 5 years after an exception is made.

§ 1000.38 What flood insurance requirements are applicable?

Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128), a recipient may not permit the use of Federal financial assistance for acquisition and construction purposes (including rehabilitation) in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the following conditions are met:

(a) The community in which the area is situated is participating in the National Flood Insurance Program in accord with section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106(a)), or less than a year has passed since FEMA notification regarding such flood hazards. For this purpose, the "community" is the governmental entity, such as an Indian tribe or authorized tribal organization, an Alaska Native village, or authorized Native organization, or a municipality or county, that has authority to adopt and enforce flood plain management regulations for the area; and

(b) Where the community is participating in the National Flood Insurance Program, flood insurance on the building is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(a)).

§ 1000.40 Do lead-based paint poisoning prevention requirements apply to affordable housing activities under NAHASDA?

Yes, the provisions of 24 CFR part 35 which provide lead-based paint poisoning prevention requirements are applicable.

§ 1000.42 Are the requirements of section 3 of the Housing and Urban Development Act of 1968 applicable?

Yes. Recipients shall comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and HUD's implementing regulations in 24 CFR part 135, to the maximum extent feasible and consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance for housing (including public and Indian housing) shall, to the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, be directed to low-and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low-and very low-income persons residing in the area where the work is to be performed.

§ 1000.44 What prohibitions on the use of debarred, suspended or ineligible contractors apply?

The prohibitions in 24 CFR part 24 on the use of debarred, suspended or ineligible contractors apply.

§ 1000.46 Do drug-free workplace requirements apply?

Yes, the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*) and HUD's implementing regulations in 24 CFR part 24 apply.

Subpart B—Affordable Housing Activities

§ 1000.101 What is affordable housing?

Affordable housing is defined in section 4(2) of NAHASDA and is described in title II of NAHASDA.

§ 1000.102 What are eligible affordable housing activities?

Eligible affordable housing activities are those described in section 202 of NAHASDA.

§ 1000.104 What families are eligible for affordable housing activities?

The following families are eligible for affordable housing activities:

(a) Low income Indian families on a reservation or Indian area.

(b) A non-low income Indian family may receive housing assistance in accordance with § 1000.118. Non-low income Indian families currently residing in housing assisted under the 1937 Act are presumed to have met the requirements of this section, absent evidence to the contrary.

(c) A non-Indian family may receive housing assistance on a reservation or Indian area if the non-Indian family's housing needs cannot be reasonably met without such assistance and the recipient determines that the presence of that family on the reservation or Indian area is essential to the well-being of Indian families. Non-Indian families currently residing in housing assisted under the 1937 Act are presumed to have met the requirements of this section, absent evidence to the contrary.

§ 1000.106 What activities under title II of NAHASDA require HUD approval?

(a) Activities under NAHASDA sections 201(b)(2) (Housing for non-low income Indian families) and 202(6) (Model activities), require HUD approval.

(b) Activities under section 201(b)(3) of NAHASDA for non-Indian families do not require HUD approval but only require that the recipient determine that the presence of that family on the reservation or Indian area is essential to the well-being of Indian families and the non-Indian family's housing needs cannot be reasonably met without such assistance.

§ 1000.108 How is HUD approval obtained by a recipient for housing for non low-income Indian families and model activities?

Recipients are required to submit proposals to operate model housing activities or other housing programs as defined in NAHASDA sections 201(b)(2) and 202(6) for non low-income families. Proposals may be submitted in the recipient's IHP one year plan or at any time by amendment of the IHP, or by special request to HUD at any time.

§ 1000.110 How will HUD determine whether to approve model housing activities or other housing programs?

HUD will review all proposals with the goal of approving the program and encouraging the flexibility, discretion, and self-determination granted to Indian tribes under NAHASDA to formulate and operate innovative housing programs that meet the intent of NAHASDA.

§ 1000.112 How long does HUD have to review and act on a model housing activity or other housing program proposal?

Whether submitted in the IHP one year plan or at any other time by amendment, HUD will have sixty days after receiving the proposal to notify the recipient that the proposal for model activities or other housing programs is approved or disapproved. If no decision is made by HUD within sixty days of receiving the proposal, the proposal is deemed to have been approved by HUD.

§ 1000.114 What should HUD do before declining a model housing activity or other housing program?

HUD shall consult with a recipient regarding the recipient's model housing activity or other housing program before disapproval. To the extent resources are available, HUD shall provide technical assistance to the recipient in amending and modifying the proposal if necessary. In case of a denial, HUD shall give the specific reasons for the denial.

§ 1000.116 What recourse does a recipient have if HUD disapproves a model housing activity or other program?

(a) Within thirty days of receiving HUD's denial of a model housing activity or other program, the recipient may request reconsideration of the denial, in writing. The request shall set forth justification for the reconsideration.

(b) Within twenty-one days of receiving the request, HUD shall reconsider the recipient's request and either affirm or reverse its initial decision in writing, setting forth its reasons for the decision. If the decision was made by the Assistant Secretary, the decision will constitute final agency action. If the decision was made at a lower level, then paragraphs (c) and (d) of this section will apply.

(c) The recipient may appeal any denial of reconsideration by filing an appeal with the Assistant Secretary within twenty days of receiving the denial. The appeal shall set forth the reasons why the recipient does not agree with HUD's decision and set forth justification for the reconsideration.

(d) Within twenty days of receipt of the appeal, the Assistant Secretary shall review the recipient's appeal and act on the appeal, setting forth the reasons for the decision.

§ 1000.118 Under what conditions may non low-income Indian families participate in the program?

(a) A recipient may provide the following types of assistance to non low-income Indian families under the conditions specified in paragraphs (b), (c) and (d) of this section:

(1) Homeownership activities under section 202(2) of NAHASDA;

(2) Model activities under section 202(6) of NAHASDA; and

(3) Loan guarantee activities under title VI of NAHASDA.

(b) A recipient must demonstrate to HUD that there is a need for housing for each family which cannot reasonably be met without such assistance. HUD shall make approvals consistent with the intent of NAHASDA.

(c) A recipient may use up to ten percent of the recipient's annual grant amount for families whose income falls within 80 to 100% of the median income without HUD approval. HUD approval is required if a recipient plans to use more than ten percent of its annual grant amount for such assistance or to provide housing for families over 100% of median income.

(d) The non low-income Indian family must pay back, at a minimum:

(1) The amount a low income family at 80% median income is paying back for the assistance; plus

(2) The fair market value of the assistance multiplied by the percentage by which the income of the non-low income Indian family exceeds 80% of median income.

§ 1000.120 May a recipient use Indian preference or tribal preference in selecting families for housing assistance?

Yes. The IHP may set out a preference for the provision of housing assistance to Indian families who are members of the Indian tribe or to other Indian families if the recipient has adopted the preference in its admissions policy. The recipient shall ensure that housing activities funded under NAHASDA are subject to the preference.

§ 1000.122 May NAHASDA grant funds be used as matching funds to obtain and leverage funding, including any federal or state program and still be considered an affordable housing activity?

There is no prohibition in NAHASDA against using grant funds as matching funds.

§ 1000.124 What is the maximum and minimum rent or homebuyer payment a recipient can charge a low-income rental tenant or homebuyer?

A recipient can charge a low-income rental tenant or homebuyer payments not to exceed thirty percent (30%) of the adjusted income of the family. The recipient may also decide to compute its rental and homebuyer payments on any lesser percentage of adjusted income of the family.

§ 1000.126 May a recipient charge flat or income-adjusted rents?

Yes, providing rental or homebuyer payment of the low-income family does not exceed thirty percent (30%) of the family's adjusted income.

§ 1000.128 Is income verification required for assistance under NAHASDA?

(a) Yes, the recipient must verify that the family is income eligible based on anticipated annual income. The family is required to provide documentation to verify this determination. The recipient is required to maintain the documentation on which the determination of eligibility is based.

(b) The recipient may require a family to periodically verify its income in order to determine housing payments or continued occupancy consistent with locally adopted policies. When income verification is required, the family must provide documentation which verifies its income, and this documentation must be retained by the recipient.

§ 1000.130 May a recipient charge a non low-income family rents or homebuyer payments which are more than 30% of the family's adjusted income?

Yes. A recipient may charge a non low-income family rents or homebuyer payments which are more than 30% of the family's adjusted income.

§ 1000.132 Are utilities considered a part of rent or homebuyer payments?

Utilities may be considered a part of rent or homebuyer payments if a recipient decides to define rent or homebuyer payments to include utilities in its written policies on rents and homebuyer payments required by section 203(a)(1) of NAHASDA. A recipient may define rents and homebuyer payments to exclude utilities.

§ 1000.134 When may a recipient (or entity funded by a recipient) demolish or dispose of Indian housing units owned or operated pursuant to an ACC?

(a) A recipient (or entity funded by a recipient) may undertake a planned demolition or disposal of Indian housing units owned or operated pursuant to an ACC when:

(1) The recipient has performed a financial analysis demonstrating that it is more cost-effective or housing program-effective for the recipient to demolish or dispose of the unit than to continue to operate or own it;

(2) The housing unit has been condemned by the government which has authority over the unit;

(3) The housing unit is an imminent threat to the health and safety of housing residents; or

(4) Continued habitation of a housing unit is inadvisable due to cultural or historical considerations.

(b) The recipient cannot take any action to demolish or dispose of the property other than performing the analysis cited in paragraph (a) of this section until HUD has been notified in writing of the recipient's intent to demolish or dispose of the housing units consistent with section 102(c)(4)(H) of NAHASDA. The written notification must set out the recipient's analysis used to arrive at the decision to demolish or dispose of the property and may be set out in a recipient's IHP or in a separate submission to HUD.

(c) In any disposition sale of a housing unit, the recipient will use a sale process designed to maximize the sale price. The sale proceeds from the disposition of any housing unit are program income under NAHASDA and must be used in accordance with the requirements of NAHASDA and this part.

§ 1000.136 What insurance requirements apply to housing units assisted with NAHASDA grants?

(a) The recipient shall provide adequate insurance either by purchasing insurance or by indemnification against casualty loss by providing insurance in adequate amounts to indemnify the recipient against loss from fire, weather, and liability claims for all housing units owned or operated by the recipient. These requirements are in addition to applicable flood insurance requirements under § 1000.38.

(b) The recipients shall not require insurance (other than flood insurance where required under § 1000.38) on units assisted by grants to families for privately owned housing if there is no risk of loss or exposure to the recipient or if the assistance is in an amount less than \$5000, but will require insurance when repayment of all or part of the assistance is part of the assistance agreement.

(c) The recipient shall require contractors and subcontractors to either provide insurance covering their activities or negotiate adequate indemnification coverage to be provided by the recipient in the contract.

§ 1000.138 What constitutes adequate insurance?

Insurance is adequate if it is a purchased insurance policy from an insurance provider or a plan of self-insurance in an amount that will protect the financial stability of the recipient's IHBG program.

§ 1000.140 May a recipient use grant funds to purchase insurance for privately owned housing to protect NAHASDA grant amounts spent on that housing?

Yes. All purchases of insurance must be in accord with §§ 1000.136 and 1000.138.

§ 1000.142 What is the "useful life" during which low-income rental housing and low-income homebuyer housing must remain affordable as required in sections 205(a)(2) and 209 of NAHASDA?

Each recipient shall describe in its IHP for Secretarial determination the useful life of each assisted housing unit in each of its developments.

§ 1000.144 Are Mutual Help homes developed before NAHASDA subject to the useful life provisions of section 205(a)(2)?

No.

§ 1000.146 Is a homebuyer required to remain low-income throughout the term of their participation in a housing program funded under NAHASDA?

No. The low income eligibility requirement applies only at the time of purchase.

§ 1000.148 What law will an owner or manager follow in providing adequate written notice of eviction or termination of a lease?

Section 207(a) of NAHASDA requires that the owner or manager give adequate written notice of termination of the lease, in accordance with the period of time required under State, tribal, or local law. Notwithstanding any State, tribal, or local law, the notice must inform the resident of the opportunity, prior to any hearing or trial, to examine any relevant documents, records, or regulations directly related to the eviction or termination.

§ 1000.150 How may Indian tribes and TDHEs receive criminal conviction information on adult applicants or tenants?

(a) As required by section 208 of NAHASDA, the National Crime Information Center, police departments, and other law enforcement agencies shall provide criminal conviction information to Indian tribes and TDHEs upon request. Information regarding juveniles shall only be released to the extent such release is authorized by the law of the applicable state, Indian tribe or locality.

(b) For purposes of this section, the term "tenants" includes homebuyers who are purchasing a home pursuant to a lease-purchase agreement.

§ 1000.152 How is the recipient to use criminal conviction information?

The recipient shall use the criminal conviction information described in § 1000.150 only for applicant screening,

lease enforcement and eviction actions. The information may be disclosed only to any person who has a job related need for the information and who is an officer, employee, or authorized representative of the recipient or the owner of housing assisted under NAHASDA.

§ 1000.154 How is the recipient to keep criminal conviction information confidential?

(a) The recipient will keep all the criminal conviction record information it receives from the official law enforcement agencies listed in § 1000.150 in files separate from all other housing records.

(b) These criminal conviction records will be kept under lock and key and be under the custody and control of the recipient's housing executive director/lead official and/or his designee for such records.

(c) These criminal conviction records may only be accessed with the written permission of the Indian tribe's or TDHE's housing executive director/lead official or his designee and are only to be used for the purposes stated in section 208 of NAHASDA and the regulations in this part.

§ 1000.156 What housing development cost limits are applicable to ensure modest housing construction under NAHASDA?

Unless approved by HUD, the total development cost (TDC) per unit will be no more than 100% of the TDC. HUD will make every effort to ensure that TDC accurately reflects the cost of construction. TDC shall include the costs of making a project meet the accessibility requirements of 24 CFR 8.22 and 24 CFR 8.23 for new construction and alterations of existing housing facilities.

Subpart C—Indian Housing Plan (IHP)

§ 1000.201 How are funds made available under NAHASDA?

Every fiscal year HUD will make grants under the IHBG program to Indian tribes or their designated recipients who have submitted to HUD for that fiscal year an IHP in accordance with § 1000.212 to carry out affordable housing activities.

§ 1000.202 Who are eligible recipients?

Eligible recipients are Indian tribes, or TDHEs when authorized by one or more tribes.

§ 1000.204 How does an Indian tribe designate itself as a recipient of the grant?

(a) By resolution of the Indian tribe; or

(b) When such authority has been delegated by an Indian tribe's governing

body to a tribal committee(s), by resolution or other written form used by such committee(s) to memorialize the decisions of that body, if applicable.

§ 1000.206 How is a TDHE designated?

(a)(1) By resolution of the Indian tribe or Indian tribes to be served; or

(2) When such authority has been delegated by an Indian tribe's governing body to a tribal committee(s), by resolution or other written form used by such committee(s) to memorialize the decisions of that body, if applicable.

(b) In the absence of a designation by the Indian tribe, the default designation as provided in section 4(21) of NAHASDA shall apply.

§ 1000.208 Is submission of an IHP required?

Yes. An Indian tribe or, with the consent of its Indian tribe(s), the TDHE, must submit an IHP to HUD to receive funding under NAHASDA, except as provided in section 101(b)(2) of NAHASDA.

§ 1000.210 Who prepares and submits an IHP?

An Indian tribe, or with the authorization of an Indian tribe, in accordance with section 102(d) of NAHASDA a TDHE may prepare and submit a plan to HUD.

§ 1000.212 What are the minimum requirements for the IHP?

The minimum IHP requirements are set forth in sections 102(b) and 102(c) of NAHASDA. Recipients are only required to provide IHPs that contain these minimum elements in a form prescribed by HUD. However, Indian tribes are encouraged to perform comprehensive housing needs assessments and develop comprehensive IHPs and not limit their planning process to only those housing efforts funded by NAHASDA. An IHP should be locally driven.

§ 1000.214100 Are there separate IHP requirements for small Indian tribes?

No. HUD requirements for IHPs are minimal and HUD has general authority under section 101(b)(2) of NAHASDA to waive the IHP requirements when an Indian tribe cannot comply with IHP requirements due to circumstances beyond its control. The waiver authority under section 101(b)(2) of NAHASDA provides flexibility to address the needs of every Indian tribe, including small Indian tribes.

§ 1000.216 Can the certification requirements of section 102(c)(5) of NAHASDA be waived by HUD?

Yes, HUD may waive these certification requirements as provided

in section 101(b)(2) of NAHASDA. Recipients granted such a waiver must still comply with the nondiscrimination requirements set forth in § 1000.12.

§ 1000.218 If HUD changes its IHP format will Indian tribes be involved?

Yes. HUD will first consult with Indian tribes before making any substantial changes to HUD's IHP format.

§ 1000.220 What is the process for HUD review of IHPs and IHP amendments?

HUD will conduct the IHP review in the following manner:

(a) HUD will conduct a limited review of the IHP to ensure that its contents:

(1) Comply with the requirements of section 102 of NAHASDA which outlines the IHP submission requirements;

(2) Are consistent with information and data available to HUD;

(3) Are not prohibited by or inconsistent with any provision of NAHASDA or other applicable law; and

(4) Include the appropriate certifications.

(b) If the IHP complies with the provisions of paragraphs (a)(1), (a)(2), and (a)(3) of this section, HUD will notify the recipient of IHP compliance within 60 days after receiving the IHP. If HUD fails to notify the recipient, the IHP shall be considered to be in compliance with the requirements of section 102 of NAHASDA and the IHP is approved.

(c) If the submitted IHP does not comply with the provisions of paragraphs (a)(1), (a)(2), and (a)(3) of this section, HUD will notify the recipient of the determination of non-compliance. HUD will provide this notice no later than 60 days after receiving the IHP. This notice will set forth:

(1) The reasons for noncompliance;

(2) The modifications necessary for the IHP to meet the submission requirements; and

(3) The date by which the revised IHP must be submitted.

(d) If the recipient does not submit a revised IHP by the date indicated in the notice provided under paragraph (c) of this section, the IHP will be determined by HUD to be in non-compliance unless a waiver is approved under section 101(b)(2) of NAHASDA. If the IHP is determined by HUD to be in non-compliance and no waiver is granted, the recipient may appeal this determination following the appeal process in § 1000.224.

(e)(1) If the IHP does not contain the certifications identified in paragraph (a)(4) of this section, the recipient will

be notified within 60 days of submission of the IHP that the plan is incomplete. The notification will include a date by which the certifications must be submitted.

(2) If the recipient has not complied or cannot comply with the certification requirements due to circumstances beyond the control of the Indian tribe(s), within the timeframe established, the recipient can request a waiver in accordance with section 101(b)(2) of NAHASDA. If the waiver is approved, the recipient is eligible to receive its grant in accordance with any conditions of the waiver.

§ 1000.222 Can an Indian tribe or TDHE amend its IHP?

Yes. Section 103(c) of the NAHASDA specifically provides that a recipient may submit modifications or revisions of their IHP to HUD for review and determination of compliance. Unless the initial IHP certification provided by an Indian tribe allowed for the submission of IHP amendments without further tribal certifications, a tribal certification must accompany submission of IHP amendments by a TDHE to HUD. HUD will consider modifications to the IHP in accordance with § 1000.220. HUD will act on amended IHPs within 60 days.

§ 1000.224 Can HUD's determination regarding the non-compliance of an IHP or a modification to an IHP be appealed?

(a) Yes. Within 30 days of receiving HUD's disapproval of an IHP or of a modification to an IHP, the recipient may submit a written request for reconsideration of the determination. The request shall include the justification for the reconsideration.

(b) Within 21 days of receiving the request, HUD shall reconsider its initial determination and provide the recipient with written notice of its decision to affirm, modify, or reverse its initial determination. This notice will also contain the reasons for HUD's decision.

(c) The recipient may appeal any denial of reconsideration by filing an appeal with the Assistant Secretary within 21 days of receiving the denial. The appeal shall set forth the reasons why the recipient does not agree with HUD's decision and include justification for the reconsideration.

(d) Within 21 days of receipt of the appeal, the Assistant Secretary shall review the recipient's appeal and act on the appeal. The Assistant Secretary will provide written notice to the recipient setting forth the reasons for the decision. The Assistant Secretary's decision constitutes final agency action.

§ 1000.226 What are eligible administrative and planning expenses?

Eligible administrative and planning expenses of the IHBG program include, but are not limited to:

(a) Costs of overall program management;

(b) Coordination monitoring and evaluation;

(c) Preparation of the IHP;

(d) Preparation of the annual performance report; and

(e) Collection of data for purposes of challenging data used in the IHBG formula (see § 1000.320(a)).

§ 1000.228 When is a local cooperation agreement required for affordable housing activities?

The requirement for a local cooperation agreement applies to assistance of rental and lease-purchase homeownership units under the 1937 Act or NAHASDA which are owned by the Indian tribe or TDHE.

§ 1000.230 When does the requirement for exemption from taxation apply to affordable housing activities?

The requirement for exemption from taxation applies only to assistance of rental and lease-purchase homeownership units under the 1937 Act or NAHASDA which are owned by the Indian tribe or TDHE.

Subpart D—Allocation Formula

§ 1000.301 What is the purpose of the IHBG formula?

The IHBG formula is used to allocate equitably and fairly funds made available through NAHASDA among eligible Indian tribes. A TDHE may be a recipient on behalf of an Indian tribe.

§ 1000.302 What are the definitions applicable for the IHBG formula?

Allowable Expense Level (AEL) factor.

In rental projects, AEL is the per-unit per-month dollar amount of expenses (excluding utilities and expenses allowed under § 950.715) computed in accordance with § 950.710 which is used to compute the amount of operating subsidy. The "AEL factor" is the relative difference between a local area AEL and the national weighted average for AEL.

Annual Income. For purposes of the IHBG formula, annual income is a household's total income as defined by the U.S. Census Bureau.

Date of Full Availability (DOFA) means the last day of the month in which substantially all the units in a housing development are available for occupancy.

Fair Market Rent (FMR) factors are gross rent estimates; they include

shelter rent plus the cost of all utilities, except telephones. HUD estimates FMRs on an annual basis for 354 metropolitan FMR areas and 2,355 nonmetropolitan county FMR areas. The "FMR factor" is the relative difference between a local area FMR and the national weighted average for FMR.

Formula area is the geographic area over which the Indian tribe exercises jurisdiction or for which an Indian tribe or TDHE has an executed local cooperation agreement. The term "*Formula area*" includes, but is not limited to:

- (1) A reservation;
- (2) Trust land;
- (3) Alaska Native Village Statistical Area;
- (4) Alaska Native Claims Settlement Act Corporation Service Area;
- (5) Tribal Jurisdictional Statistical Area;
- (6) Tribal Designated Statistical Area;
- (7) Former Indian Reservation Areas in Oklahoma;
- (8) Congressionally Mandated Service Area; and
- (9) Department of the Interior Near-Reservation Service Area.

Indian Housing Authority (IHA) financed means a homeownership program where title rests with the homebuyer and a security interest rests with the IHA.

Mutual Help Occupancy Agreement (MHOA) means a lease with option to purchase contract between an IHA and a homebuyer.

Overcrowded means households with more than 1.01 persons per room as defined by the U.S. Decennial Census.

Section 8 means the making of housing assistance payments to eligible families leasing existing housing pursuant to the provisions of the 1937 Act.

Section 8 unit means the contract annualized housing assistance payments (certificates, vouchers, and project based) under the Section 8 program.

Without kitchen or plumbing means, as defined by the U.S. Decennial Census, an occupied house without one or more of the following items:

- (1) Hot and cold piped water;
- (2) A flush toilet;
- (3) A bathtub or shower;
- (4) A sink with piped water;
- (5) A range or cookstove; or
- (6) A refrigerator.

§ 1000.304 May the IHBG formula be modified?

Yes, as long as any modification does not conflict with the requirements of NAHASDA. The formula may be modified:

- (a) Upon development of a set of measurable and verifiable data directly

related to Native American housing need. Any data set developed shall be compiled with the consultation and involvement of Indian tribes and examined and/or implemented not later than 5 years from the date of issuance of these regulations and periodically thereafter; or

(b) If it is determined by HUD that subsidy is needed to operate and maintain NAHASDA units.

§ 1000.306 Who can make modifications to the IHBG formula?

HUD can make modifications in accordance with § 1000.304 provided that any changes proposed by HUD are published and made available for public comment in accordance with applicable law before their implementation.

§ 1000.308 What are the components of the IHBG formula?

The IHBG formula consists of three components:

- (a) Need;
- (b) Formula Current Assisted Housing Stock (CAS); and
- (c) Section 8.

§ 1000.310 How is the need component developed?

The need component consists of seven criteria. They are:

- (a) American Indian and Alaskan Native (AIAN) Households with housing cost burden greater than 50% of annual income;
- (b) AIAN Households which are overcrowded or without kitchen or plumbing;
- (c) Housing Shortage which is the number of AIAN households with an annual income less than 80% of median income reduced by the combination of current assisted stock and units developed under NAHASDA;
- (d) AIAN households with annual income less than 30% of median income;
- (e) AIAN households with annual income between 30% and 50% of median income;
- (f) AIAN households with annual income between 50% and 80% of median income;
- (g) AIAN persons.

§ 1000.312 What if a formula area is served by more than one Indian tribe?

(a) If an Indian tribe's formula area overlaps with the formula area of one or more other Indian tribes, the funds allocated to that Indian tribe for the geographic area in which the formula areas overlap will be divided based on:

- (1) The Indian tribe's proportional share of the population in the overlapping geographic area; and

(2) The Indian tribe's commitment to serve that proportional share of the population in such geographic area.

(b) Tribal membership in the geographic area will be based on data that all Indian tribes involved agree to use. Suggested data sources include tribal enrollment lists, Indian Health Service User Data, and Bureau of Indian Affairs data. If the Indian tribes involved cannot agree on what data source to use, HUD will make the decision on what data will be used to divide the funds between the Indian tribes 60 days before formula allocation.

§ 1000.314 What are data sources for the need variables?

The sources of data for the need variables shall be data available that is collected in a uniform manner that can be confirmed and verified for all AIAN households and persons living in an identified area. Initially, the data used are U.S. Decennial Census data.

§ 1000.316 May Indian tribes, TDHEs, or HUD challenge the data from the U.S. Decennial Census or provide an alternative source of data?

Yes. Provided that the questions asked in a tribal survey are consistent with those asked in the U.S. Decennial Census and responses are gathered and presented in a method acceptable to HUD.

§ 1000.318 Will data used by HUD to determine an Indian tribe's or TDHE's formula allocation be provided to the Indian tribe or TDHE before the allocation?

Yes. HUD shall provide notice to the Indian tribe or TDHE of the data and projected allocation to be used for the formula not less than 120 days before an allocation.

§ 1000.320 How may an Indian tribe, TDHE, or HUD challenge data?

(a) An Indian tribe, TDHE, or HUD may challenge data used in the IHBG formula. Collection of data for this purpose is an allowable cost for IHBG funds.

(b) An Indian tribe or TDHE that has data in its possession that it contends are more accurate than data contained in the U.S. Decennial Census, and the data are collected in a manner acceptable to HUD, should submit the data and proper documentation to HUD no later than 90 days prior to scheduled distribution of NAHASDA block grant funds. HUD shall respond to such data submittal not later than 45 days after receipt of the data and either approve or challenge the validity of such data. Pursuant to HUD's action, the following shall apply:

(1) In the event HUD challenges the validity of the submitted data, the Indian tribe or TDHE and HUD shall attempt in good faith to resolve any discrepancies so that such data may be included in formula allocation. Should the Indian tribe or TDHE and HUD be unable to resolve any discrepancy by the date of formula allocation, the dispute shall be carried forward to the next funding year and resolved in accordance with the dispute resolution procedures set forth in this part for model housing activities (§ 1000.116).

(2) Pursuant to resolution of the dispute:

(i) If the Indian tribe or TDHE prevails, an adjustment to the Indian tribe's or TDHE's subsequent allocation for the subsequent year shall be made retroactive to include only the disputed Fiscal Year(s); or

(ii) If HUD prevails, no further action shall be required.

(c) In the event HUD questions that the data contained in the formula does not accurately represent the Indian tribe's need, HUD shall request the Indian tribe to submit supporting documentation to justify the data and provide a commitment to serve the population indicated in the geographic area.

§ 1000.322 How is the need component adjusted for local area costs?

The need component is adjusted by the TDC factor.

§ 1000.324 What is current assisted stock?

Current assisted stock consists of housing units owned or operated pursuant to an ACC. This includes all low rent, Mutual Help, and Turnkey III housing units under management as of September 30, 1997, as indicated in the IHP.

§ 1000.326 What is formula current assisted stock?

Formula current assisted stock is current assisted stock as described in § 1000.324 plus housing units in the development pipeline as of September 30, 1997 when they are owned or operated by the Indian tribe or TDHE and are under management as indicated in the IHP.

§ 1000.328 How is the Formula Current Assisted Stock (FCAS) Component developed?

The Formula Current Assisted Stock component consists of two elements. They are:

(a) *Operating subsidy*. The operating subsidy consists of two variables which are:

(1) The number of low-rent FCAS units multiplied by the FY 1996

national per unit subsidy (adjusted to full funding level) multiplied by an adjustment factor for inflation; and

(2) The number of Mutual Help and Turnkey III FCAS units multiplied by the FY 1996 national per unit subsidy (adjusted to full funding level) multiplied by an adjustment factor for inflation.

(b) *Modernization allocation*.

Modernization allocation consists of the number of Low Rent, Mutual Help, and Turnkey III FCAS units multiplied by the national per unit amount of allocation for FY 1996 modernization multiplied by an adjustment factor for inflation.

§ 1000.330 How is the Section 8 criteria developed?

The Section 8 criteria includes one variable: The number of Section 8 units under contract on September 30, 1997 where the Section 8 contract has expired or is due to expire in any subsequent Fiscal Year (as shown in an Indian tribe's or TDHE's IHP) multiplied by the national per unit average for Section 8 subsidy adjusted for inflation.

§ 1000.332 How long will Section 8 units be counted for purposes of the formula?

Section 8 units shall continue as rental units and be included in the formula as long as they continue to be operated as low income rental units as included in the Indian tribe's or TDHE's IHP.

§ 1000.334 How will the formula allocation be affected if an Indian tribe or TDHE removes some or all of its Formula Current Assisted Stock from inventory?

The formula allocation will be reduced by the number of units removed from the inventory. Such information shall be indicated through the Annual Performance Report.

§ 1000.336 Do units under Formula Current Assisted Stock ever expire from inventory used for the formula?

Yes. Mutual Help and Turnkey III units shall be removed from the Formula Current Assisted Stock when the Indian tribe or TDHE no longer has the legal right to own, operate, or maintain the unit, whether such right is lost by conveyance, demolition, or otherwise. Provided, that conveyance of each Mutual Help or Turnkey III unit occurs when a unit becomes eligible for conveyance by the terms of the MHOA and further provided that the Indian tribe or TDHE actively enforces strict compliance by the homebuyer with the terms and conditions of the MHOA, including the requirements for full and timely payment. Rental units shall continue to be included for formula

purposes as long as they continue to be operated as low income rental units.

§ 1000.338 How are Formula Current Assisted Stock and Section 8 adjusted for local area costs?

There are two adjustment factors that are used to adjust the allocation of funds for the Current Assisted Stock portion of the formula. They are:

(a) Operating Subsidy as adjusted by the greater of the AEL factor or FMR factor (AELFMR); and

(b) Modernization as adjusted by the TDC factor.

§ 1000.340 Are IHA financed units included in the determination of Formula Current Assisted Stock?

No. If these units are not owned or operated at the time (September 30, 1997) pursuant to an ACC then they are not included in the determination of Formula Current Assisted Stock.

Subpart E—Federal Guarantees for Financing of Tribal Housing Activities

§ 1000.401 What terms are used throughout this subpart?

As used throughout title VI of NAHASDA and in this subpart:

Applicant means the entity that requests a HUD guarantee under the provisions of this subpart.

Borrower means an Indian tribe or TDHE that receives funds in the form of a loan with the obligation to repay in full, with interest, and has executed notes or other obligations that evidence that transaction.

Issuer means an Indian tribe or TDHE that issues or executes notes or other obligations. An issuer can also be a borrower.

§ 1000.402 Are state recognized Indian tribes eligible for guarantees under title VI of NAHASDA?

Those state recognized Indian tribes that meet the definition set forth in section 4(12)(C) of NAHASDA are eligible for guarantees under title VI of NAHASDA.

§ 1000.404 What constitutes tribal approval to issue notes or other obligations under title VI of NAHASDA?

Tribal approval is evidenced by a written tribal resolution that authorizes the issuance of notes or obligations by the Indian tribe or a TDHE on behalf of the Indian tribe.

§ 1000.406 How does an Indian tribe or TDHE show that it has made efforts to obtain financing without a guarantee and cannot complete such financing in a timely manner?

The Indian tribe or TDHE shall submit a certification that states that the Indian

tribe has attempted to obtain financing and can not do so in a timely manner without a guarantee from the HUD. Written documentation shall be maintained by the Indian tribe or TDHE to support the certification.

§ 1000.408 What conditions shall HUD prescribe when providing a guarantee for notes or other obligations issued by an Indian tribe?

HUD shall provide that:

(a) Any loan, notes or other obligation guaranteed under title VI of NAHASDA, including the security given for the note or obligation, may be sold or assigned by the lender to any financial institution that is subject to examination and supervision by an agency of the Federal Government, any state, or the District of Columbia without destroying or otherwise negatively affecting the guarantee; and

(b) Indian tribes and housing entities are encouraged to explore creative financing mechanisms and in so doing shall not be limited in obtaining a guarantee. These creative financing mechanisms include but are not limited to:

(1) Borrowing from private or public sources or partnerships;

(2) Issuing tax exempt and taxable bonds where permitted; and

(3) Establishing consortiums or trusts for borrowing or lending, or for pooling loans.

(c) The repayment period may not exceed twenty years; and

(d) Lender and issuer/borrower must certify that they acknowledge and agree to comply with all applicable tribal laws.

§ 1000.410 Can an issuer obtain a guarantee for more than one note or other obligation at a time?

Yes. To obtain multiple guarantees, the issuer shall demonstrate that:

(a) The issuer will not exceed a total for all notes or other obligations in an amount equal to five times its grant amount, excluding any amount no longer owed on existing notes or other obligations; and

(b) Issuance of additional notes or other obligations is within the financial capacity of the issuer.

§ 1000.412 How is an issuer's financial capacity demonstrated?

An issuer must demonstrate its ability to meet its obligations and to protect and maintain the viability of housing developed or operated pursuant to the 1937 Act.

§ 1000.414 What is a repayment contract in a form acceptable to HUD?

(a) The Secretary's signature on a contract shall signify HUD's acceptance

of the form, terms and conditions of the contract.

(b) In loans under title VI of NAHASDA, involving a contract between an issuer and a lender other than HUD, HUD's approval of the loan documents and guarantee of the loan shall be deemed to be HUD's acceptance of the sufficiency of the security furnished. No other security may be required by HUD at a later date.

§ 1000.416 Can grant funds be used to pay costs incurred when issuing notes or other obligations?

Yes. Other costs that can be paid using grant funds include but are not limited to the costs of servicing and trust administration, and other costs associated with financing of debt obligations.

§ 1000.418 May grants made by HUD under section 603 of NAHASDA be used to pay net interest costs incurred when issuing notes or other obligations?

Yes. Other costs that can be paid using grant funds include but are not limited to the costs of servicing and trust administration, and other costs associated with financing of debt obligations, not to exceed 30 percent of the net interest cost.

§ 1000.420 What are the procedures for applying for loan guarantees under title VI of NAHASDA?

(a) The borrower applies to the lender for a loan using a guarantee application form prescribed by HUD.

(b) The lender provides the loan application to HUD to determine if funds are available for the guarantee. HUD will reserve these funds for a period of 90 days if the funds are available and the applicant is otherwise eligible under this subpart. HUD may extend this reservation period for an extra 90 days if additional documentation is necessary.

(c) The borrower and lender negotiate the terms and conditions of the loan in consultation with HUD.

(d) The borrower and lender execute documents.

(e) The lender formally applies for the guarantee.

(f) HUD reviews and provides a written decision on the guarantee.

§ 1000.422 What are the application requirements for guarantee assistance under title VI of NAHASDA?

The application for a guarantee must include the following:

(a) An identification of each of the activities to be carried out with the guaranteed funds and a description of how each activity qualifies as an affordable housing activity as defined in section 202 of NAHASDA.

(b) A schedule for the repayment of the notes or other obligations to be guaranteed that identifies the sources of repayment, together with a statement identifying the entity that will act as the borrower.

(c) A copy of the executed loan documents, if applicable, including, but not limited to, any contract or agreement between the borrower and the lender.

(d) Certifications by the borrower that:

(1) The borrower possesses the legal authority to pledge and that it will, if approved, make the pledge of grants required by section 602(a)(2) of NAHASDA.

(2) The borrower has made efforts to obtain financing for the activities described in the application without use of the guarantee; the borrower will maintain documentation of such efforts for the term of the guarantee; and the borrower cannot complete such financing consistent with the timely execution of the program plans without such guarantee.

(3) The drug-free workplace certification required under 24 CFR part 24.

(4) The certification regarding debarment and suspension required under 24 CFR part 24.

(5) It possesses the legal authority to borrow or issue obligations and to use the guaranteed funds in accordance with the requirements of this subpart;

(6) Its governing body has duly adopted or passed as an official act a resolution, motion, or similar official action that:

(i) Identifies the official representative of the borrower, and directs and authorizes that person to provide such additional information as may be required; and

(ii) Authorizes such official representative to issue the obligation or to execute the loan or other documents, as applicable.

(7) The borrower has complied with the regulations of section 602(a) of NAHASDA.

(8) The borrower will comply with the requirements governing displacement, relocation, and real property acquisition described in subpart A of this part.

(9) The borrower has complied and will comply with the other provisions of NAHASDA, applicable regulations, and other applicable laws.

§ 1000.424 How does HUD review a guarantee application?

The procedure for review of a guarantee application includes the following steps:

(a) HUD will review the application for compliance with title VI of

NAHASDA and the implementing regulations in this part.

(b) HUD will accept the certifications submitted with the application. HUD may, however, consider relevant information that challenges the certifications and require additional information or assurances from the applicant as warranted by such information.

§ 1000.426 For what reasons may HUD disapprove an application or approve an application for an amount less than that requested?

HUD may disapprove an application or approve a lesser amount for any of the following reasons:

(a) HUD determines that the guarantee constitutes an unacceptable risk. Factors that will be considered in assessing financial risk shall include, but not be limited to, the following:

(1) The length of the proposed repayment period;

(2) The ratio of the expected annual debt service requirements to the expected available annual grant amount, taking into consideration the obligations of the borrower under the provisions of section 203(b) of NAHASDA;

(3) Evidence that the borrower will not continue to receive grant assistance under this part during the proposed repayment period;

(4) The borrower's ability to furnish adequate security pursuant to section 602(a) of NAHASDA;

(5) The amount of program income the proposed activities are reasonably estimated to contribute toward repayment of the guaranteed loan or other obligations;

(b) The loan or other obligation for which the guarantee is requested exceeds any of the limitations specified in sections 601(d) or section 605(d) of NAHASDA.

(c) Funds are not available in the amount requested.

(d) Evidence that the performance of the borrower under this part has been determined to be unacceptable pursuant to the requirements of subpart F of this part, and that the borrower has failed to take reasonable steps to correct performance.

(e) The activities to be undertaken are not eligible under Section 202 of NAHASDA.

(f) The loan or other obligation documents for which a guarantee is requested do not meet the requirements of this subpart.

§ 1000.428 When will HUD issue notice to the applicant if the application is approved at the requested or reduced amount?

(a) HUD shall make every effort to approve a guarantee within 30 days of

receipt of a completed application including executed documents and, if unable to do so, will notify the applicant of the need for additional time and/or if additional information is required.

(b) HUD shall notify the applicant in writing that the guarantee has either been approved, reduced, or disapproved. If the request is reduced or disapproved, the applicant will be informed of the specific reasons for reduction or disapproval.

(c) HUD shall issue a certificate to guarantee the debt obligation of the issuer subject to compliance with NAHASDA including but not limited to sections 105, 601(a), and 602(c) of NAHASDA, and such other conditions as HUD may specify in the commitment documents in a particular case.

§ 1000.430 Can an amendment to an approved guarantee be made?

(a) Yes. An amendment to an approved guarantee can occur if an applicant wishes to allow a borrower/ issuer to carry out an activity not described in the loan or other obligation documents, or substantially to change the purpose, scope, location, or beneficiaries of an activity.

(b) Any changes to an approved guarantee must be approved by HUD.

§ 1000.432 How will HUD allocate the availability of loan guarantee assistance?

(a) Each fiscal year HUD may allocate a percentage of the total available loan guarantee assistance to each Area ONAP equal to the percentage of the total NAHASDA grant funds allocated to the Indian tribes in the geographic jurisdiction of that office.

(b) These allocated amounts shall remain exclusively available for loan guarantee assistance for Indian tribes or TDHEs in the jurisdiction of that office until committed by HUD for loan guarantees or until the end of the third quarter of the fiscal year. During the last quarter of the fiscal year, any residual loan guarantee commitment amount in all Area ONAP allocations shall be made available to guarantee loans for Indian tribes or TDHEs regardless of their location.

(c) In approving applications for loan guarantee assistance, HUD shall seek to maximize the availability of such assistance to all interested Indian tribes or TDHEs. HUD may limit the proportional share approved to any one Indian tribe or TDHE to its proportional share of the block grant allocation based upon the annual plan submitted by the Indian tribe or TDHE indicating intent to participate in the loan guarantee allocation process.

§ 1000.434 How will HUD monitor the use of funds guaranteed under this subpart?

HUD will monitor the use of funds guaranteed under this subpart as set forth in section 403 of NAHASDA, and the lender is responsible for monitoring performance with the documents.

Subpart F—Recipient Monitoring, Oversight and Accountability

§ 1000.501 Who is involved in monitoring activities under NAHASDA?

The recipient, the grant beneficiary and HUD are involved in monitoring activities under NAHASDA.

§ 1000.502 What are the monitoring responsibilities of the recipient, the grant beneficiary and HUD under NAHASDA?

(a) The recipient is responsible for monitoring grant activities ensuring compliance with applicable Federal requirements and monitoring performance goals under the IHP. The recipient is responsible for preparing at least annually: a compliance assessment in accordance with section 403(b) of NAHASDA; a performance report covering the assessment of program progress and goal attainment under the IHP; and an audit in accordance with the Single Audit Act, as applicable. The recipient's monitoring should also include an evaluation of the recipient's performance in accordance with performance objectives and measures. At the request of a recipient, other Indian tribes and/or TDHEs may provide assistance to aid the recipient in meeting its performance goals or compliance requirements under NAHASDA.

(b) Where the recipient is a TDHE, the grant beneficiary (Indian tribe) is responsible for monitoring programmatic and compliance requirements of the IHP and NAHASDA by requiring the TDHE to prepare periodic progress reports including the annual compliance assessment, performance and audit reports.

(c) HUD is responsible for periodically reviewing and auditing the recipient as set forth in § 1000.520, 24 CFR 8.56, and 24 CFR 146.31.

(d) HUD monitoring will consist of on-site as well as off-site review of records, reports and audits. To the extent funding is available, HUD or its designee will provide technical assistance and training, or funds to the recipient to obtain technical assistance and training. In the absence of funds, HUD shall make best efforts to provide technical assistance and training.

§ 1000.504 What are the recipient performance objectives?

Performance objectives are developed by each recipient. Performance objectives are criteria by which the recipient will monitor and evaluate its performance. For example, if in the IHP the recipient indicates it will build new houses, the performance objective may be the completion of the homes within a certain time period and within a certain budgeted amount.

§ 1000.506 If the TDHE is the recipient, must it submit its monitoring evaluation/results to the Indian tribe?

Yes. The Indian tribe as the grant beneficiary must receive a copy of the monitoring evaluation/results so that it can fully carry out its oversight responsibilities under NAHASDA.

§ 1000.508 If the recipient monitoring identifies programmatic concerns, what happens?

If the recipient's monitoring activities identify areas of concerns, the recipient will take one or more of the following actions:

- (a) Depending upon the nature of the concern, the recipient may obtain additional training or technical assistance from HUD, other Indian tribes or TDHEs, or other entities.
- (b) The recipient may develop and/or revise policies, or ensure that existing policies are better enforced.
- (c) The recipient may take appropriate administrative action to remedy the situation.
- (d) The recipient may refer the concern to an auditor or to HUD for additional corrective action.

§ 1000.510 What is the Indian tribe's responsibility if the tribal monitoring identifies compliance concerns?

The Indian tribe's responsibility is to ensure that appropriate corrective action is taken.

§ 1000.512 Are performance reports required?

Yes. An annual report shall be submitted by the recipient to HUD in a format acceptable by HUD. Annual performance reports shall contain:

- (a) The information required by section 404(b) of NAHASDA;
- (b) Brief information on the following:
 - (1) A comparison of actual accomplishments to the objectives established for the period;
 - (2) The reasons for slippage if established objectives were not met; and
 - (3) Analysis and explanation of cost overruns or high unit costs; and
- (c) Any information regarding the recipient's performance in accordance with HUD's performance measures.

§ 1000.514 When must the annual performance report be submitted?

The annual performance report must be submitted within 45 days of the end of the program year. If a justified request is submitted by the recipient, the Area ONAP may extend the due date for submission of the performance report.

§ 1000.516 What reporting period is covered by the annual performance report?

For the first year of NAHASDA, the period to be covered by the annual performance report will be October 1, 1997 through September 30, 1998. Subsequent reporting periods will coincide with the recipient's fiscal year.

§ 1000.518 When must a recipient obtain public comment on its annual performance report?

The recipient must make its report publicly available to tribal members, non-Indians served under NAHASDA, and other citizens in the Indian area, in sufficient time to permit comment before submission of the report to HUD. The recipient determines the manner and times for making the report available. The recipient shall include a summary of any comments received by the grant beneficiary or recipient from tribal members, non-Indians served under NAHASDA, and other citizens in the Indian area.

§ 1000.520 What are the purposes of HUD review?

At least annually, HUD will review each recipient's performance to determine whether the recipient:

- (a) Has carried out its eligible activities in a timely manner, has carried out its eligible activities and certifications in accordance with the requirements and the primary objective of NAHASDA and with other applicable laws and has a continuing capacity to carry out those activities in a timely manner;
- (b) Whether the recipient has complied with the IHP of the grant beneficiary; and
- (c) Whether the performance reports of the recipient are accurate.

§ 1000.522 How will HUD give notice of on-site reviews?

Whenever an on-site review is to be conducted, HUD shall give written notice to the Indian tribe and TDHE that a review will be commenced. Prior written notice will not be required in emergency situations. All notices shall state the general nature of the review.

§ 1000.524 What are HUD's performance measures for the review?

HUD has the authority to develop performance measures which the

recipient must meet as a condition for compliance under NAHASDA. The performance measures are:

- (a) Within 2 years of grant award under NAHASDA, no less than 90 percent of the grant must be obligated.
- (b) The recipient has complied with the required certifications in its IHP and all policies and the IHP have been made available to the public.
- (c) Fiscal audits have been conducted on a timely basis and in accordance with the requirements of the Single Audit Act, as applicable. Any deficiencies identified in the audit report have been addressed within the prescribed time period.
- (d) Accurate annual performance reports were submitted to HUD within 45 days after the completion of the recipient's fiscal year.
- (e) The recipient has met the IHP goals and objectives in the 1-year plan and demonstrated progress on the 5-year plan goals and objectives.
- (f) The recipient has complied with the requirements of 24 CFR part 1000 and all other applicable Federal statutes and regulations.

§ 1000.526 What information will HUD use for its review?

In reviewing each recipient's performance, HUD may consider the following:

- (a) The approved IHP and any amendments thereto;
- (b) Reports prepared by the recipient;
- (c) Records maintained by the recipient;
- (d) Results of HUD's monitoring of the recipient's performance, including on-site evaluation of the quality of the work performed;
- (e) Audit reports;
- (f) Records of drawdowns of grant funds;
- (g) Records of comments and complaints by citizens and organizations within the Indian area;
- (h) Litigation; and
- (i) Any other relevant information.

§ 1000.528 What adjustments may HUD make in the amount of NAHASDA annual grants under section 405 of NAHASDA?

HUD may make appropriate adjustments in the amount of the annual grants under NAHASDA in accordance with the findings of HUD pursuant to reviews and audits under section 405 of NAHASDA. HUD may adjust, reduce, or withdraw grant amounts, or take other action as appropriate in accordance with the reviews and audits, except that grant amounts already expended on affordable housing activities may not be recaptured or deducted from future assistance provided on behalf of an Indian tribe.

§ 1000.530 What are remedies available for substantial noncompliance?

(a) If HUD finds after reasonable notice and opportunity for hearing that a recipient has failed to comply substantially with any provision of NAHASDA, HUD shall—

(1) Terminate payments under NAHASDA to the recipient;

(2) Reduce payments under NAHASDA to the recipient by an amount equal to the amount of such payments that were not expended in accordance with NAHASDA;

(3) Limit the availability of payments under NAHASDA to programs, projects, or activities not affected by the failure to comply; or

(4) In the case of noncompliance described in § 1000.534, provide a replacement TDHE for the recipient.

(b) HUD may on due notice suspend payments at any time after the issuance of the opportunity for hearing pending such hearing and final decision, to the extent HUD determines such action necessary to preclude the further expenditure of funds for activities affected by such failure to comply.

(c) If HUD determines that the failure to comply substantially with the provisions of NAHASDA is not a pattern or practice of activities constituting willful noncompliance and is a result of the limited capability or capacity of the recipient, HUD may provide technical assistance for the recipient (directly or indirectly) that is designed to increase the capability or capacity of the recipient to administer assistance under NAHASDA in compliance with the requirements under NAHASDA.

(d) In lieu of, or in addition to, any action described in this section, if HUD has reason to believe that the recipient has failed to comply substantially with any provision of NAHASDA, HUD may refer the matter to the Attorney General of the United States with a recommendation that appropriate civil action be instituted.

§ 1000.532 What hearing procedures will be used?

(a) The hearing procedures in 24 CFR part 26 shall be used.

(b) For hearings under section 504 of the Rehabilitation Act of 1973 or the Age Discrimination Act of 1975, the procedures at 24 CFR part 180 shall be used.

§ 1000.534 When may HUD require replacement of a TDHE?

(a) In accordance with section 402 of NAHASDA, as a condition of HUD making a grant on behalf of an Indian tribe, the Indian tribe shall agree that, notwithstanding any other provisions of

law, HUD may, only in the circumstances discussed in paragraph (b) of this section, require that a replacement TDHE serve as the recipient for the Indian tribe.

(b) HUD may require a replacement TDHE for an Indian tribe only upon a determination by HUD on the record after opportunity for hearing that the recipient has engaged in a pattern or practice of activities that constitute substantial or willful noncompliance with the requirements of NAHASDA.

§ 1000.536 When does failure to comply substantially cease?

HUD shall confirm the existence of certain conditions regarding the recipient's compliance. Such conditions shall have been described in HUD's finding of substantial noncompliance. A recipient may request HUD to review its situation to determine if it is now in compliance.

§ 1000.538 What audits are required?

The recipient must comply with the requirements of the Single Audit Act which requires annual audits of recipients that expend Federal funds equal to or in excess of \$300,000. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

§ 1000.540 Who is the cognizant audit agency?

For the purposes of the audit described in § 1000.538, the Department of the Interior is the cognizant agency.

§ 1000.542 Are audit costs an eligible program expense?

Yes, audit costs are an eligible administrative expense. For a recipient not covered by the Single Audit Act, but yet chooses to have an audit, the cost of such an audit would be an eligible program expense. If the Indian tribe is the recipient then program funds can be used to pay a prorated share of the tribal audit cost that is attributable to NAHASDA funded activities.

§ 1000.544 Must a copy of the recipient's audit pursuant to the Single Audit Act be submitted to HUD?

Yes. A copy of the latest recipient audit under the Single Audit Act must be submitted with the annual performance report.

§ 1000.546 If the TDHE is the recipient, does it have to submit a copy of its audit to the Indian tribe?

Yes. The Indian tribe as the grant beneficiary must receive a copy of the audit report so that it can fully carry out

its oversight responsibilities with NAHASDA.

§ 1000.548 How long must the recipient maintain program records?

(a) This section applies to all financial and programmatic records, supporting documents, and statistical records of the grantee which are required to be maintained by the statute, regulation, or grant agreement.

(b) Except as otherwise provided in this section, records must be retained for three years from the date the recipient submits to HUD the annual performance report that covers the last expenditure of grant funds under a particular grant.

(c) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

§ 1000.550 Which agencies have right of access to the recipient's records relating to activities carried out under NAHASDA?

(a) HUD and the Comptroller General of the United States, and any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of recipients and sub-recipients which are pertinent to the NAHASDA assistance, in order to make audits, examination, excerpts, and transcripts.

(b) The right of access in this section lasts as long as the records are maintained.

§ 1000.552 Does the Freedom of Information Act (FOIA) apply to recipient records?

FOIA does not apply to recipient records.

§ 1000.554 Does the Federal Privacy Act apply to recipient records?

The Federal Privacy Act does not apply to recipient records.

PART 955—[REDESIGNATED]

4. Part 955 is redesignated as part 1005 and amended as set forth below.

PART 1005—LOAN GUARANTEES FOR INDIAN HOUSING

5. The authority citation for newly designated 24 CFR part 1005 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.*; 42 U.S.C. 1715z-13a and 3535(d).

6. Newly designated Section 1005.101 is revised to read as follows:

§ 1005.101 What is the applicability and scope of these regulations?

Under the provisions of section 184 of the Housing and Community Development Act of 1992, as amended by the Native American Housing Assistance and Self-Determination of 1996 (12 U.S.C. 1515z-13a), the Department of Housing and Urban Development (the Department) has the authority to guarantee loans for the construction, acquisition, or rehabilitation of 1- to 4-family homes to be owned by Native Americans on restricted Indian lands. This part provides requirements that are in addition to those in section 184.

7. Newly designated Section 1005.103 is amended by revising the section heading and by adding the definitions of the terms "Holder" and "Mortgagee" in alphabetical order, to read as follows:

§ 1005.103 What definitions are applicable to this program?

* * * * *

Holder means the holder of the guarantee certificate and is also referred to as the lender holder, the holder of the certificate, the holder of the guarantee, and the mortgagee.

* * * * *

Mortgagee means the same as "Holder."

* * * * *

8.-9. Newly designated Section 1005.105 is amended by:

- a. Revising the section heading;
- b. Revising paragraphs (b) and (d)(3); and
- c. Adding a new paragraph (f), to read as follows:

§ 1005.105 What are eligible loans?

* * * * *

(b) *Eligible borrowers.* A loan guarantee under Section 184 may be made to a borrower for which an Indian Housing Plan has been submitted and approved under 24 CFR part 1000, and that is:

- (1) An Indian who will occupy it as a principal residence and who is otherwise qualified under Section 184;
- (2) An Indian Housing Authority or Tribally Designated Housing Entity; or
- (3) An Indian tribe.

* * * * *

(d) * * *

(3) The principal amount of the mortgage is held by the mortgagee in an interest bearing account, trust, or escrow for the benefit of the mortgagor, pending advancement to the mortgagor's creditors as provided in the loan agreement; and

* * * * *

(f) *Lack of access to private financial markets.* In order to be eligible for a loan guarantee, the borrower must provide

written certification that it lacks access to private financial markets. Written documentation must be maintained to support the certification.

10.-11. Newly designated Section 1005.107 is amended by:

- a. Revising the section heading;
- b. Revising paragraph (a) introductory text;
- c. Revising paragraph (a)(2);
- d. Revising paragraph (b) introductory text;
- e. Redesignating paragraphs (b)(3) and (b)(4) as paragraphs (b)(4) and (b)(5), respectively; and
- f. Adding a new paragraph (b)(3), to read as follows:

§ 1005.107 What is eligible collateral?

(a) *In general.* A loan guaranteed under Section 184 may be secured by any collateral authorized under and not prohibited by Federal, state, or tribal law and determined by the lender and approved by the Department to be sufficient to cover the amount of the loan, and may include, but is not limited to, the following:

* * * * *

(2) A first and/or second mortgage on property other than trust land;

* * * * *

(b) *Trust land as collateral.* If trust land or restricted Indian land is used as collateral or security for the loan, the following additional provisions apply:

* * * * *

(3) *Liquidation.* The mortgagee or HUD shall only pursue liquidation after offering to transfer the account to an eligible tribal member, the tribe, or the Indian housing authority servicing the Indian tribe. The mortgagee or HUD shall not sell, transfer, or otherwise dispose of or alienate the property except to one of these three entities.

* * * * *

§ 1005.109 [Amended].

12.-13. Newly designated Section 1005.109 is amended by revising the section heading to read

"§ 1005.109 What is a guarantee fee?"

§ 1005.111 [Amended].

14.-15. Newly designated Section 1005.111 is amended by revising the section heading to read

"§ 1005.111 What safety and quality standards apply?"

16. Newly designated Section 1005.112 is added to read as follows:

§ 1005.112 How do eligible lenders and eligible borrowers demonstrate compliance with applicable tribal laws?

The lender/borrower will certify that they acknowledge and agree to comply with all applicable tribal laws. An

Indian tribe with jurisdiction over the dwelling unit does not have to be notified of individual Section 184 loans unless required by applicable tribal law.

17. Section 1005.113 is added to read as follows:

§ 1005.113 How does HUD enforce lender compliance with applicable tribal laws?

As provided in Section 184, failure of the lender to comply with applicable tribal law is considered to be a practice detrimental to the interest of the borrower.

Dated: June 9, 1997.

Note: The following appendix will not appear in the Code of Federal Regulations.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix A to Part 1000—IHBG Formula Mechanics

This appendix shows the different components of the IHBG formula. The following text explains how each component of the IHBG formula works.

The proposed IHBG formula is calculated by initially determining the amount a tribe receives for Formula Current Assisted Stock (FCAS) and Section 8. FCAS funding is comprised of two components, operating subsidy and modernization. The operating subsidy component is calculated based on the national per unit subsidy provided in FY 1996 (adjusted to a 100 percent funding level) for each of the following types of programs—Low Rent, Homeownership (Mutual Help and Turnkey III), and Section 8¹. A tribe's total units in each of the above categories is multiplied times the relevant national per unit subsidy amount. That amount is summed and multiplied times a local area cost adjustment factor for management.

The local area cost adjustment factor for management is called AELFMR. AELFMR is the greater of a tribe's Allowable Expense Level (AEL) or Fair Market Rent (FMR) factor, where the AEL and FMR factors are determined by dividing each tribe's AEL and FMR by their respective national weighted average (weighted on the unadjusted allocation under FCAS operating subsidy). The adjustment made to the FCAS component of the IHBG formula is then the new AELFMR factor divided by the national weighted average of the AELFMR.

The modernization component of FCAS is based on the national per unit modernization funding provided in FY 1996 to Indian Housing Authorities (IHAs). The per unit amount is determined by dividing the

¹ Note that the attachment shows this amount to be \$2,440 for Low Rent, \$528 for Mutual Help, and \$3,625 for Section 8. These numbers may change slightly as the department gets better information.

modernization funds by the total Low Rent, Mutual Help, and Turnkey III units operated by IHAs in 1996. A tribe's total Low Rent, Mutual Help, and Turnkey III units are multiplied times the per unit modernization amount. That amount is then multiplied times a local area cost adjustment factor for construction.

The construction adjustment factor planned to be used is Total Development Cost (TDC) for the area divided by the weighted national average for TDC (weighted on the unadjusted allocation for modernization).

After determining the total amount allocated under FCAS for each tribe, it is summed for every tribe. The national total amount for FCAS is subtracted from the Fiscal Year appropriation to determine the total amount to be allocated under the Need component of the IHBG formula. The Need component is then calculated by multiplying a tribe's share of housing need by a local area cost adjustment factor for construction (Total Development Cost).

The Need component of the IHBG formula is calculated using seven factors weighted as shown on the attachment. The way this works is as follows: 25 percent of the funds allocated under Need will be allocated by a tribe's share of the total Native American households overcrowded and or without kitchen or plumbing living in their formula area, while 22 percent of the allocated funds will be allocated by a tribe's share of the total Native American households paying more than 50 percent of their income for housing living in the Indian tribe's formula area, and so on. The attachment shows the current national totals for each of the need variables. The national total will change as tribes

update information about their formula area and data for individual areas are challenged.

After determining each Indian tribe's allocation under the IHBG formula, their grants are compared to how much they received in FY 1996 for operating subsidy and modernization. If a tribe received more in FY 1996 for operating subsidy and modernization than they do under the IHBG formula, their grant is adjusted up to the FY 1996 level. Indian tribes receiving more under the IHBG formula than in FY 1996 "pay" for the upward adjustment for the other tribes by having their grants adjusted down. The formula for that adjustment is shown below. Because many more Indian tribes have grant amounts above the FY 1996 level than those with grants below the FY 1996 level, each tribe contributes very little relative to their total grant to fund the adjustment.

Tribal Grant = Formula Current Assisted Stock (FCAS) + NEED

FCAS = FCAS Subsidy + FCAS Modernization

FCAS Subsidy = [{ \$2440 * (Low-rent units) } + { \$528 * (Homeowner Units) } + { \$3625 * (S8 expired "units") }] * FMRAEL/1.15

CAS Modernization = [\$1974 * (Total Low-rent and homeowner units)] * TDC / \$111649

NEED = (Appropriation—National Total FCAS) * Need Share * TDC/\$113462

Need Share =

{ .25 * (AIAN Households overcrowded and or without kitchen or plumbing) / 86831 } +

{ .22 * (AIAN Households paying more than 50% of their income for housing) / 39842 } +

{ .15 * (Housing Shortage²) / 147268 } +
 { .13 * (AIAN Households less than 30% of Median Income) / 87322 } +
 { .07 * (AIAN Households with incomes between 30% and 50% of Median Income) / 58692 } +
 { .07 * (AIAN Households with incomes between 50% and 80% of Median Income) / 68425 } +
 { .11 * (AIAN Persons) / 1059041 }.

ADJUSTED AS FOLLOWS:

30 tribes receive less than their FY 1996 funding for operating subsidy and modernization.

The total amount they are less than the FY 1996 amount is \$5,941,550. 337 tribes receive funding greater than their FY 1996 funding for operating subsidy and modernization.

The total amount they are above the FY 1996 amount is \$234,663,723

The tribes receiving less than the FY 1996 amount are adjusted to the FY 1996 amount. The tribes that received more than the FY 1996 amount (not including new tribes), have their funding amount decreased in proportion to their share of the total funding among tribes with more than the FY 1996 amount. The adjustment formula looks as follows:

Grant for tribes with amount greater than FY 1996 amount =
 (Grant prior to adjustment) — [\$5,941,550 *
 { (amount above FY 1996) /
 \$234,663,723 }]

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² AIAN Households less than 80 percent of median income—CAS units—S8—NAHASDA units.

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ADJUSTMENT FOR FY 1996 OPERATING SUBSIDY AND MODERNIZATION	
TOTAL UNADJUSTED (FCAS + NEED)	(\$4,040,010 + \$1,703,180)
Amount Tribe received in FY 1996 for Operating Subsidy and Modernization	\$5,743,190
Grant above FY 96 (Total unadjusted less FY 1996 Operating Subsidy and Modernization amount)	\$4,550,277
Amount Grant Adjusted down to fund Tribes with Grants less than their FY 1996 operating subsidy and modernization	(\$5,743,190 - \$4,550,277)
	[\$5,941,550 * (\$1,192,913 / \$234,663,723)]
	\$30,204
FINAL GRANT (UNADJUSTED GRANT less Adjustment Factor)	(\$5,743,190 - \$30,204)
	\$5,712,986

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[REG-107644-97]

RIN 1545-AV26

Permitted Elimination of Preretirement Optional Forms of Benefit**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that would permit an amendment to a qualified plan that eliminates certain preretirement optional forms of benefit. These regulations affect employers that maintain qualified plans, plan administrators of qualified plans and participants in qualified plans. This document provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of the topics to be discussed at the public hearing must be received by September 30, 1997. A public hearing is scheduled for October 28, 1997.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG-107644-97), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG-107644-97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. A public hearing is scheduled to be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Foley, (202) 622-6050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent

to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by September 2, 1997. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in § 1.411(d)-4. This information is required for a taxpayer who wants to amend a qualified plan to eliminate certain preretirement optional forms of benefit. This information will be used to determine whether taxpayers have amended a qualified plan. The collection of information is voluntary to obtain a benefit. The likely recordkeepers are businesses or other for-profit organizations and non-profit institutions.

Estimated total recordkeeping burden: 48,800 hours.

Estimated average burden per recordkeeper: For Master and *Prototype Plan Employers:* 10 minutes. For Master and *Prototype Plan Sponsors:* 30 minutes. For Employers with *Individually Designed Plans:* 30 minutes.

Estimated number of recordkeepers: 135,000.

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

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.

Background

This notice contains proposed amendments to the income tax regulations (26 CFR Part 1) under section 411(d) of the Internal Revenue Code of 1986.

Section 411(d)(6) generally provides that a plan will not be treated as satisfying the requirements of section 411 if the accrued benefit of a participant is decreased by a plan amendment. Under section 411(d)(6)(B), a plan amendment that eliminates an optional form of benefit will be treated as reducing accrued benefits to the extent that the amendment applies to benefits accrued as of the later of the adoption date or the effective date of the amendment. However, section 411(d)(6)(B) also permits the Secretary to provide in regulations that this rule will not apply to an amendment that eliminates an optional form of benefit.

Section 401(a)(9) provides that, in order for a plan to be qualified under section 401(a), distributions from the plan must commence no later than the "required beginning date." Prior to 1997, section 401(a)(9)(C) generally provided that the required beginning date is April 1 following the calendar year in which the employee attains age 70½. Consequently, in order to satisfy section 401(a)(9), qualified plans, other than certain church and governmental plans, have provided for distributions to commence no later than April 1 following the calendar year that an employee attains age 70½. These distributions commence without regard to whether the employee has retired from employment with the employer maintaining the plan.

Section 1404 of the Small Business Job Protection Act of 1996, Public Law 104-188 (SBJPA), amended the definition of required beginning date that applies to an employee who is not a 5-percent owner. Section 401(a)(9)(C)(i), as amended, provides that, in the case of such an employee, the required beginning date is April 1 of the calendar year following the later of the calendar year in which the employee attains age 70½ or the calendar year in which the employee retires. Accordingly, except for 5-percent owners, a plan is no longer required to provide for distributions that commence prior to retirement in order to satisfy section 401(a)(9).

The right to commence benefit distributions in any form at a particular time is an optional form of benefit

within the meaning of section 411(d)(6)(B) and § 1.411(d)-4 Q&A-1(b). In enacting section 1404 of the SBJPA, Congress did not alter the application of section 411(d)(6). Thus, except to the extent authorized by regulations, a plan amendment that eliminates the right to commence preretirement benefit distributions in a plan after age 70½ (or restricts the right by adding an additional condition) violates section 411(d)(6) if the amendment applies to benefits accrued as of the later of the adoption or effective date of the amendment.

Notice 96-67 (1996-53 I.R.B. 12) provided questions and answers addressing certain issues relating to the amendment of section 401(a)(9)(C) by the SBJPA and requested comments concerning the extent to which relief from section 411(d)(6) would be appropriate for plan amendments that eliminate preretirement distributions after age 70½ (e.g., by limiting section 411(d)(6) protection to employees above a certain age).

Overview

1. Permitted Elimination of Preretirement Distributions After Age 70½

The legislative history to section 1404 of the SBJPA indicates that the reason for amending the definition of required beginning date was that it is inappropriate to require all participants to commence distributions by age 70½ without regard to whether the participant is still employed by the employer. Because section 1404 did not alter the application of section 411(d)(6) to plan provisions allowing or requiring preretirement distributions after age 70½, an employer's choices for amending its plan to implement the SBJPA change to the definition of required beginning date are limited unless the IRS and Treasury grant relief from section 411(d)(6).

As one choice, in accordance with the guidance in Announcement 97-24 (1997-11 I.R.B. 24) March 13, 1997, the employer may give employees the option of commencing distributions at age 70½ or deferring commencement until after retirement. As a second alternative, the employer may amend the plan to eliminate the right to preretirement distributions solely with respect to future accruals. However, under this second approach, each current participant would retain the right to receive preretirement distributions after age 70½ with respect to a portion of his or her accrued benefit.

The IRS and Treasury recognize the potential complexity of administering plans (particularly defined benefit plans) that adopt either of these choices. In addition, an employer may not have voluntarily chosen to offer preretirement distributions to employees who have attained age 70½ but instead may have included these provisions in its plan solely to comply with section 401(a)(9) prior to its amendment by the SBJPA. Therefore, after consideration of the comments received in response to Notice 96-67 and subject to the conditions described below, the proposed regulations would provide relief from section 411(d)(6) for certain plan amendments that eliminate preretirement distributions commencing at age 70½.

2. Conditions on the Relief From Section 411(d)(6)

a. Protection for Employees Who Are Near Age 70½

Under the proposed regulation, an amendment to eliminate a preretirement age 70½ distribution option may apply only to benefits with respect to employees who attain age 70½ in or after a calendar year, specified in the amendment, that begins after the later of December 31, 1998, or the adoption date of the amendment. The relief from section 411(d)(6) is limited to distributions to employees who attain age 70½ after calendar year 1998 because employees who were near age 70½ at the time of enactment of the SBJPA may have had an expectation of receiving preretirement distributions in the near future and may have made plans that took into account these expected distributions.

b. Optional Forms of Benefit for Participants Retiring After Age 70½

A plan using this relief generally may not preclude an employee who retires after the calendar year in which the employee attains age 70½ from receiving an optional form of benefit that would have been available if the employee had retired in the calendar year in which the employee attained age 70½.

c. Timing of Plan Amendment

An amendment to eliminate a preretirement age 70½ distribution option may be adopted no later than the last day of any remedial amendment period that applies to the plan for changes under the SBJPA. However, in no event will the deadline for adopting such a plan amendment be before December 31, 1998. The relief provided is available only to employers that adopt

the amendment within this specified time period because the relief is being provided to simplify the implementation of section 401(a)(9), as amended by the SBJPA, for employers that do not voluntarily provide preretirement distributions for an extended period after the enactment of the SBJPA.

3. Circumstances Under Which No Relief is Required

Many employers do not need relief under section 411(d)(6) in order to implement the SBJPA change in the definition of required beginning date in their plans. The regulation includes an example of such a plan, a profit-sharing plan that permits an employee to elect distribution after age 59½ at any time and in any amount. The example illustrates that this plan may be amended to implement the SBJPA change in the definition of required beginning date without violating section 411(d)(6). In this example, the section 411(d)(6) relief proposed in this regulation is not required because the optional forms of benefit in the plan that reflect the pre-SBJPA mandatory distribution requirements of section 401(a)(9) are encompassed by the optional forms of benefit provided under the general elective distribution provisions. The right to commence distributions at age 70½ continues to be available under the plan even after the plan is amended to implement the SBJPA change in the required beginning date.

Effective Date

The guidance in these proposed regulations will only be effective after the date that final regulations are adopted and will only apply to amendments adopted and effective after that date. In order to provide employers with ample time to craft the appropriate plan amendment to implement the relief from section 411(d)(6) that would be provided when these regulations are finalized, the IRS and the Treasury intend to finalize these regulations on an expedited schedule after consideration of the comments received.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Further, it is hereby certified, pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility

Act, that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. The burden imposed by the collection of information is the burden of amending a plan to modify the provisions reflecting section 401(a)(9). The cost of the amendment varies depending upon whether the small entity involved maintains an individually designed plan or uses a master or prototype plan. For an individually designed plan, the small entity maintaining the plan will be responsible for arranging to have the amendment made. Most small entities with individually designed plans will have the amendment done by a skilled outside service provider, such as a consulting firm or law firm. The time required to make such an amendment is estimated at 30 minutes, which is not a significant economic impact, even for a very small entity. Moreover, most very small entities that maintain a qualified plan use a master or prototype plan. For master and prototype plans, the plan sponsor drafts a single amendment for all of the employers participating in the plan. The average time required for the amendment per employer participating in a master or prototype plan is estimated to be 10 minutes, which certainly is not a substantial economic impact. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 28, 1997, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral arguments at the hearing must submit written comments and an outline of the

topics to be discussed and the time devoted to each topic by September 30, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information: The principal author of these regulations is Cheryl Press, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for § 1.411(d)-4 to read as follows:

Authority: 26 U.S.C. 7805. * * *

§ 1.411(d)-4 also issued under 26 U.S.C. 411(d)(6). * * *

Par. 2. Section 1.411(d)-4 is amended by adding Q&A-10 to read as follows:

§ 1.411(d)-4 Section 411(d)(6) protected benefits.

* * * * *

Q-10. If a plan provides for an age 70½ distribution option that commences prior to retirement from employment with the employer maintaining the plan, to what extent may the plan be amended to eliminate this distribution provision?

A-10. (a) *In general.* The right to commence benefit distributions in a particular form and at a particular time prior to retirement from employment with the employer maintaining the plan is a separate optional form of benefit within the meaning of section 411(d)(6)(B) and Q&A-1 of this section, even if the plan provision creating this right was included in the plan solely to comply with section 401(a)(9), as in effect for years before January 1, 1997. Therefore, except as otherwise provided in paragraph (b) of this A-10, a plan amendment violates section 411(d)(6) if it eliminates an age 70 1/2 distribution option (within the meaning of paragraph (c) of this A-10) to the extent that it applies to benefits accrued as of the

later of the adoption date or effective date of the amendment.

(b) *Permitted elimination of optional form.* An amendment of a plan will not violate the requirements of section 411(d)(6) merely because the amendment eliminates an age 70½ distribution option to the extent that the option provides for distribution to an employee prior to retirement from employment with the employer maintaining the plan, provided that—

(1) The amendment eliminating this optional form of benefit applies only to benefits with respect to employees who attain age 70½ in or after a calendar year, specified in the amendment, that begins after the later of—

(i) December 31, 1998; or

(ii) The adoption date of the amendment;

(2) The plan does not, except to the extent required by section 401(a)(9), preclude an employee who retires after the calendar year in which the employee attains age 70½ from receiving benefits in any of the same optional forms of benefit (except for the difference in the timing of the commencement of payments) that would have been available had the employee retired in the calendar year in which the employee attained age 70½; and

(3) The amendment is adopted no later than the last day of any remedial amendment period that applies to the plan for changes under the Small Business Job Protection Act of 1996 (110 Stat. 1755) (but in no event will the adoption of the amendment be required before December 31, 1998).

(c) *Age 70½ distribution option.* For purposes of this Q&A-10, an age 70½ distribution option is an optional form of benefit under which benefits payable in a particular distribution form (including any modifications that may be elected after benefit commencement) commence at a time during the period that begins on or after January 1 of the calendar year in which an employee attains age 70½ and ends April 1 of the immediately following calendar year.

(d) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Plan A, a defined benefit plan, provides each participant with a qualified joint and survivor annuity (QJSA) that is available at any time after the later of age 65 or retirement. However, in accordance with section 401(a)(9) as in effect prior to January 1, 1997, Plan A provides that if an employee does not retire by the end of the calendar year in which the employee attains age 70½, then the QJSA commences on the following April 1. On October 1, 1998, Plan A is amended to provide that, for an employee

who is not a 5-percent owner and who attains age 70½ after 1998, benefits may not commence before the employee retires but must commence no later than the April 1 following the later of the calendar year in which the employee retires or the calendar year in which the employee attains age 70½. This amendment satisfies this Q&A-10 and does not violate section 411(d)(6).

Example 2. Plan B, a money purchase pension plan, provides each participant with a choice of a QJSA or a single sum distribution commencing at any time after the later of age 65 or retirement. In addition, in accordance with section 401(a)(9) as in effect prior to January 1, 1997, Plan B provides that benefits will commence in the form of a QJSA on April 1 following the calendar year in which the employee attains age 70½, except that, with spousal consent, a participant may elect to receive annual installment payments equal to the minimum amount necessary to satisfy section 401(a)(9) (calculated in accordance with a method specified in the plan) until retirement, at which time a participant may choose between a QJSA and a single sum distribution (with spousal consent). On June 30, 1998, Plan B is amended to provide that, for an employee who is not a 5-percent owner and who attains age 70½ after 1998, benefits may not commence prior to retirement but benefits must commence no later than April 1 after the later of the calendar year in which the employee retires or the calendar year in which the employee attains age 70½. The amendment further provides that the option described above to receive annual installment payments prior to retirement will not be available under the plan to an employee who is not a 5-percent owner and who attains age 70½ after 1998. This amendment satisfies this Q&A-10 and does not violate section 411(d)(6).

Example 3. Plan C, a profit-sharing plan, contains two distribution provisions. Under the first provision, in any year after an employee attains age 59½, the employee may elect a distribution of any specified amount not exceeding the balance of the employee's account. In addition, the plan provides a section 401(a)(9) override provision under which, if, during any year following the year that the employee attains age 70½, the employee does not elect an amount at least equal to the minimum amount necessary to satisfy section 401(a)(9) (calculated in accordance with a method specified in the plan), Plan C will distribute the difference by December 31 of that year (or for the year the employee attains age 70½, by April 1 of the following year). On December 31, 1996, Plan C is amended to provide that, for an employee other than an employee who is a 5-percent owner in the year that the employee attains age 70½, in applying the section 401(a)(9) override provision, the later of the year of retirement, or year of attainment of age 70½, is substituted for the year that the employee attains age 70½. After the amendment, Plan C still permits each employee to elect to receive the same amount as was available before the amendment. Because this amendment does not eliminate an optional form of benefit, the amendment does not violate section 411(d)(6).

Accordingly, the amendment is not required to satisfy the conditions of paragraph (b) of this A-10.

(e) This Q&A-10 applies to amendments adopted and effective after the publication of final regulations in the **Federal Register**.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 97-17218 Filed 7-1-97; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-104893-97]

RIN 1545-AV10

Guidance Regarding Claims for Income Tax Convention Benefits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations regarding rules for determining whether U.S. source payments made to entities, including entities that are fiscally transparent in the United States and/or the applicable treaty jurisdiction, are eligible for treaty-reduced tax rates. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Comments and outlines of topics to be discussed at the public hearing scheduled for September 24, 1997, at 10 a.m. must be received by September 3, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-104893-97), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-104893-97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public

hearing will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Elizabeth Karzon, (202) 622-3860; concerning submissions and the hearing, Evangelista Lee, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 894. The temporary regulations contain rules relating to eligibility for benefits under income tax conventions for payments to flow-through entities or arrangements.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866.

Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 24, 1997, at 10 a.m. in the Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more

than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit comments and an outline of the topics to be discussed and the time to be devoted to each topic by September 3, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Proposed Effective Date

This amendment applies to payments received by an entity on or after January 1, 1998.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.894-1, paragraph (d) is added to read as follows:

§ 1.894-1 Income affected by treaty.

* * * * *

[The text of proposed paragraph (d) is the same as the text of § 1.894-1T(d) published elsewhere in this issue of the **Federal Register**.]

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 97-17468 Filed 6-30-97; 12:19 pm]

BILLING CODE 4830-01-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN 104-1-9706(a); TN 148-1-9705(a); FRL-5849-3]

Approval of Revisions to the Tennessee State Implementation Plan Regarding Visibility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On February 9, 1993, and December 19, 1994, the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), submitted to EPA revisions to the Tennessee State Implementation Plan (SIP) for the purpose of visibility protection. The intended effect of these revisions is to meet the requirements of the Clean Air Act (CAA) for the purpose of assuring visibility protection in mandatory Class I Federal areas. In the final rules section of this **Federal Register**, the EPA is approving the submitted chapter in its entirety as a direct-final rule without prior proposal because the EPA views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by August 1, 1997.

ADDRESSES: Written comments on this action should be addressed to William Denman at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference files TN104-01-9706 and TN148-01-9705. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. William Denman 404/562-9030

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, 9th Floor L & C

Annex, 401 Church Street, Nashville, Tennessee 37243-1531

FOR FURTHER INFORMATION CONTACT: William Denman at 404/562-9030.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 17, 1997.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 97-17184 Filed 7-1-97; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO-025-1025; FRL-5852-2]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve two regulations which are components of Missouri's State Implementation Plan (SIP) to meet the 15% Rate-of-Progress Plan (15% Plan, or ROPP) requirements of section 182(b)(1)(A) of the Clean Air Act (CAA), as amended (the Act). Specifically, the EPA is proposing to approve Missouri rules 10 CSR 10-5.443, "Control of Gasoline Reid Vapor Pressure," and 10 CSR 10-5.490, "Municipal Solid Waste Landfills" (MSWL). The implementation of these rules will achieve reductions in the emissions of volatile organic compounds (VOC) of approximately 7.76 tons per day (TPD), or approximately 14 percent of the reductions required with the St. Louis ozone nonattainment area. Final action on these regulations will incorporate them into the Federally approved SIP.

DATES: Comments on this proposed action must be received in writing by August 1, 1997.

ADDRESSES: Comments may be mailed to Royan W. Teter, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Royan W. Teter at (913) 551-7609.

SUPPLEMENTARY INFORMATION: On March 18, 1996, the EPA proposed a limited approval and limited disapproval (61 FR 10968) of the SIP submitted by the state of Missouri to meet the 15% Plan requirements of section 182(b)(1)(A) of the CAA, as amended (the Act). The EPA also proposed conditional approval for two individual components of the 15% Plan. The EPA proposed a limited approval because the 15% Plan, submitted by Missouri, will result in significant emission reductions from the 1990 baseline and, thus, will improve air quality. The EPA proposed a limited disapproval of the 15% Plan because it failed to demonstrate sufficient reductions of VOCs to meet the 15% ROPP requirements.

Certain circumstances have arisen which the EPA believes make it appropriate to repropose approval for two regulations which make up a portion of Missouri's 15% Plan. What follows is an explanation of these circumstances and a summary of the technical basis for the EPA's proposal. A more detailed discussion is presented in the EPA's Technical Support Document (TSD).

I. 10 CSR 10-5.443, "Control of Gasoline Reid Vapor Pressure" (RVP)

RVP is a measure of a fuel's volatility. It reflects the rate at which gasoline evaporates and VOC emissions occur as it is directly proportional to the rate of evaporation. Hence, the lower the RVP, the lower the rate of evaporation. RVP restrictions during the summer months can help offset the effect of summer temperatures upon the volatility of gasoline which, in turn, lowers emissions of VOCs. VOC emissions are an important component in the production of ground level ozone during the hot summer months. Hence, further restricting the allowable RVP of gasoline sold within the St. Louis nonattainment area will help the state's effort to attain and maintain compliance with the National Ambient Air Quality Standard (NAAQS) for ozone.

A. Background

In 1994, Missouri proposed the RVP rule as an interim and immediate strategy to reduce VOC emissions and was not intended as a permanent and long-term component of the 15% Plan. As such, the 1994 7.2 pounds per square inch (psi) low RVP rule was not submitted to the EPA prior to the 1994 ozone season and was not Federally enforceable. The proposed rule was not intended to imply a preference for either low RVP or reformulated gasoline (RFG) as a fuel control strategy for 1995 and

beyond. Missouri adopted an RVP strategy in light of the expediency with which it could be implemented to reduce VOC emissions in the St. Louis area. It was also recognized that the RVP of southern grade RFG is limited to a maximum of 7.2 psi RVP. An RVP limit of 7.2 psi for conventional gasoline would have an immediate impact on air quality while still providing the flexibility to opt into the RFG program, if the state legislature grants the enabling authority to select RFG as a fuel control strategy for St. Louis.

Almost immediately after the proposed 7.2 psi RVP rule was adopted by Missouri Air Conservation Commission (MACC) in March 1994, the state resumed discussions with several petroleum industry representatives on the option of further restricting the RVP of St. Louis's gasoline. An agreement was reached regarding the 15% Plan for the St. Louis area, which included lowering gasoline RVP control to 7.0 psi, as provided in the current state rule.

To meet the 15% VOC emission reduction requirement of the CAA, as well as to demonstrate attainment of the ozone standards by 1996, the Missouri Department of Natural Resources (MDNR) evaluated the Region's emission inventory to determine the feasibility of controlling emissions from all source categories. The selected emission controls were required to be timely, effective, and enforceable. Missouri investigated additional controls for a broad range of source categories including mobile sources, fuel distribution, fuel consumption, automobile refinishing, architectural surface coating, solvent cleaning, lithographic and graphic art processes, open burning, pesticide application, and several categories subject to Federal air toxics regulations. Based on the investigation of these and other potential emission control measures, Missouri concluded that a motor vehicle fuel control measure would be necessary to meet the CAA requirements for the St. Louis ozone nonattainment area. As such, Missouri revised the St. Louis RVP rule, thereby establishing an RVP limit of 7.0 psi with a 1 psi waiver for gasoline containing at least 9 percent, but no more than 10 percent, ethanol. The revised rule became effective on May 28, 1995, and was incorporated into Missouri's 15% Plan; however, Missouri did not address the prohibition of RVP restrictions beyond those established at the Federal level as prescribed in section 211(c)(4)(A) of the CAA or the provisions in section 211(c)(4)(C) which allow for a waiver from the prohibition under certain circumstances. Likewise, the EPA did

not address these issues in its March 18, 1996, proposal. Missouri has since addressed the requirements of the Act; thus, the EPA believes it appropriate to repropose approval of Missouri's RVP rule. What follows is a discussion of the requirements of the CAA and a description of how Missouri addressed these requirements.

B. Regulatory History

In August 1987, the EPA first proposed in the **Federal Register** (FR) a two-phase national program to reduce summertime gasoline volatility (52 FR 31274). The EPA's proposal resulted in a two-phase final regulation which was incorporated into the 1990 Amendments to the CAA in section 211(h). Phase I of the regulation took effect in 1990 for the years 1990 and 1991. Phase II of the regulation took effect in May 1992 (55 FR 23658). The rule separated areas of the country into two regions identified as Class B and Class C. Generally, Class B states are the warmer southern and western states, and Class C states are the cooler northern states. Some ozone nonattainment areas were also required to meet more stringent RVP requirements. For Class B geographical areas such as St. Louis, the Phase II regulation limits the volatility of gasoline sold during the high ozone season (June through September) to 9.0 and 7.8 psi RVP for attainment and nonattainment areas, respectively. Because of its nonattainment status, St. Louis was required to comply with 7.8 psi RVP.

C. Necessity Finding

As noted above, Missouri did not find the Phase II fuel volatility control regulation sufficient to ensure expeditious attainment of the NAAQS for ozone. A more stringent low RVP requirement was deemed necessary to ensure attainment and maintenance of the ozone standard.

Under sections 211(c) and 211(h) of the CAA, the EPA has promulgated nationally applicable Federal standards for RVP levels in motor vehicle gasoline. Because a Federal control promulgated under section 211(c)(1) applies to the fuel characteristic RVP, nonidentical state controls are prohibited under section 211(c)(4). Section 211(c)(4)(A) of the Act prohibits state regulation respecting a fuel characteristic or component for which the EPA has adopted a control or prohibition, unless the state control is identical to the Federal control. Under section 211(c)(4)(C), the EPA may approve a nonidentical state fuel control as a SIP provision, if the state demonstrates that the measure is necessary to achieve the

national primary or secondary ambient air quality standard that the plan implements. The EPA can approve a state fuel requirement as necessary only if no other measures would bring about timely attainment, or if other measures exist but are unreasonable or impracticable. While the Missouri low RVP requirement is preempted by the Federal RVP requirements, the state can implement the low RVP requirement if the EPA finds it necessary and approves it as a revision to the SIP.

On February 4, 1997, MDNR submitted to EPA Region VII a draft revision to the 15% ROPP in which the state requested authorization to regulate fuel volatility, in accord with section 211(c)(4)(C). Included in the submittal were materials providing justification for requesting an exemption under section 211(c)(4)(C) of the CAA. A public hearing in regards to the SIP was held on February 27, 1997. The SIP revision was adopted by the MACC on March 27, 1997, and submitted to the EPA on May 8, 1997.

In its submittal, Missouri showed that additional VOC reductions are needed to address St. Louis's recent history of nonattainment problems and to ensure attainment of the ozone NAAQS in the nonattainment area. While the area is designated as a moderate nonattainment area, the St. Louis area is currently in danger of being classified as a serious ozone nonattainment area due to exceedances occurring since 1993. Missouri estimates that the area needs to achieve approximately 53.8 tons per day of VOC reductions to attain the ozone NAAQS. Because emission trends continue to increase, the state believes it is important that control measures producing a significant portion of the needed reduction be implemented and enforceable in time to reduce emissions beginning in the 1997 ozone season. Otherwise, there is a significant risk of exceedances and violations in 1997, and this risk will increase over time. The EPA agrees that an important criterion in evaluating the reasonableness of each control measure is whether it will achieve significant emission reductions in the near term, beginning in the 1997 and 1998 ozone seasons.

Missouri evaluated a broad range of available control measures to determine whether there are sufficient reasonable and practicable measures available to produce the needed emissions reductions without requiring low RVP gasoline. In addition to assessing the quantity of emission reductions attributable to each control measure, the state also considered the time needed for implementation and cost effectiveness of each measure in

evaluating the reasonableness and practicability of the other control measures in comparison to the low RVP gasoline requirements. Missouri found that a 7.0 psi RVP requirement would produce an estimated 6.28 tons per day of VOC emissions reductions. Based on the state's evaluation, the EPA finds that there are not sufficient other reasonable and practicable measures available to produce the quantity of emissions reductions needed to continue to achieve the NAAQS, and thus a low RVP requirement is necessary.

Although, as mentioned previously, the state's adoption of a low RVP requirement would not preclude the state from subsequently opting in to the RFG program, Missouri's submittal did not include a demonstration that RFG is unreasonable. Missouri noted that RFG is not available in St. Louis as a matter of state law, since its enabling legislation does not allow it to establish both an RFG program and an enhanced motor vehicle inspection and maintenance program.

The EPA concurs with the state's analysis and its implicit determination that "other measures" (as specified in section 211(c)(4)) need not encompass other state fuel measures including state opt-in to Federal RFG. The Agency believes that the Act does not require a state to demonstrate that other fuel measures are unreasonable or impracticable, but rather section 211(c)(4) is intended to ensure that a state resorts to a fuel measure only if there are no available practicable and reasonable nonfuels measures. Thus, in demonstrating that measures other than requiring low RVP gasoline are unreasonable or impracticable, a state is not required to submit a demonstration that other state fuel requirements or state opt-in to RFG are unreasonable or impracticable. This interpretation resolves the ambiguity of the phrase "other measures" and reasonably balances the interests underlying the statutory preemption provision. In addition, the result preserves the state's role, specified in section 101(a)(3) of the Act, as the entity primarily responsible for determining the mix of controls to be used to achieve the required emission reductions.

The state has already implemented virtually every other reasonably available control measure. Other measures that could achieve emission reductions (such as Graphic Arts, Pesticide Application, Aircraft Emissions, Stage II Vapor Recovery, Marinas, Breweries, Asphalt Application, Barge Loading, Unloading, and Transport) would only achieve a small portion of the needed emission

reductions. A detailed discussion of Missouri's findings relative to the emission reduction potential of each of these measures can be found in the EPA's TSD, as well as a detailed discussion of the EPA's necessity finding.

D. Analysis of the Rule

The Missouri rule specifies that no person shall dispense, supply, exchange in trade, offer for sale or supply, and sell or store gasoline used as a fuel for motor vehicles that has an RVP greater than 7.0 psi, or 8.0 psi for gasoline containing at least 9.0 percent by volume but not more than 10.0 percent by volume of ethanol. This rule applies beginning June 1 through September 15 of each year.

In addition, facilities other than a gasoline dispensing facility shall keep and maintain at the facility, for two years following the date of the RVP test, records of the information regarding the RVP of gasoline that is to be used as a fuel for motor vehicles.

Gasoline used exclusively for fueling implements of agriculture and gasoline in any tank, reservoir, storage vessel, or other stationary container with a nominal capacity of 500 gallons or less shall be exempt from this regulation.

The sampling procedures and test methods are consistent with the EPA recommendations as described in 40 CFR part 80, Appendices D, E, and F.

II. 10 CSR 10-5.490, "Municipal Solid Waste Landfills"

A. Background

On March 12, 1996, the EPA adopted New Source Performance Standards for Municipal Solid Waste Landfills (Title 40 CFR part 60, subpart WWW) and Emission Guidelines (EG) and Compliance Times for Municipal Solid Waste Landfills (Title 40 CFR part 60, subpart Cc). The subpart Cc EGs apply to existing MSWLs.

Six MSWLs are located in the St. Louis area. Landfills emit VOCs, including methane, through the decomposition of solid waste. The 1990 base year inventory indicates the nonmethane VOCs emitted from these six landfills are 1.51 TPD. At the time of the EPA's previous proposal on Missouri's 15% Plan, the submitted plan included only a discussion of a rule which would result in a 1.48 TPD reduction in VOC emissions within the St. Louis nonattainment area. In part, the delay in adopting a final rule was related to the state's plans to model its rule after the EPA emission standards which at the time, were yet to be promulgated. Final promulgation of the

EPA's emission standards for landfills was significantly delayed. In an October 21, 1994, letter to Gale Wright, then Chief of the EPA Air Branch, from Roger Randolph, Director, MDNR, Air Pollution Control Program, the state committed to developing this rule with implementation in 1996. The state had made every effort to move forward with this rule despite delays in the promulgation of the EPA's emission standards. Missouri submitted a draft of a rule for the EPA comment on May 17, 1995. The EPA provided comments on the draft rule in June 1995. Noting the state's progress, the EPA proposed to conditionally approve the emissions reduction credit claimed in the submitted 15% Plan. Final approval was subject to the state's submittal of a final rule by no later than November 15, 1996. The public hearing for 10 CSR 10-5.490 was held July 25, 1996. The MACC adopted 10 CSR 10-5.490, "Municipal Waste Landfills," on August 29, 1996, and the rule became effective on December 30, 1996. The final rule was submitted to the EPA on February 24, 1997. Because the final rule was not available at the time of the EPA's previous proposal and the state has met the condition for final approval prior to the EPA having taken final action on the March 18, 1996, proposal it is necessary to repropose action on this element of Missouri's 15% Plan.

B. Analysis of the Rule

Rule 10 CSR 5.490, "Municipal Solid Waste Landfills," covers the St. Louis nonattainment area. This rule meets or exceeds the requirements of the EG. The EG requires that landfills having design capacities of two and a half (2.5) million Mg by mass or greater and NMOC emissions of 50 Mg or greater shall install a gas collection and control system. Rule 10 CSR 10-5.490 is more stringent in that it applies to landfills having a design capacity of one million Mg by mass or greater and NMOC emissions of 25 Mg per year. A detailed analysis of the state's rule can be found in the EPA's TSD.

III. Proposed Action

By this action, the EPA proposes to approve Missouri rules 10 CSR 10-5.443, "Control of Gasoline Reid Vapor Pressure," and 10 CSR 10-5.490, "Municipal Solid Waste Landfills," as part of Missouri's SIP to meet the 15% ROPP requirements of section 182(b)(1)(A) of the CAA. This proposed SIP revision meets the requirements of section 110 and Part D of Title I of the CAA and 40 CFR part 51.

As indicated above, this action proposes approval of two rules submitted as part of Missouri's 15% Plan. The EPA, as explained previously, had proposed to approve or conditionally approve the regulations included in the 15% Plan, and to give limited approval and limited disapproval to the reductions claimed in the 15% Plan. The rationale was detailed in the March 18, 1996, proposal also referenced previously in this notice. The EPA is considering taking final action on the regulations in the 15% Plan, including the specific regulations described in this notice, as a separate action from the final action on the 15% reduction credits. The EPA also requests comments on whether the regulations may be acted on separately from the 15% reduction credits.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the FR on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This Federal action authorizes and approves into the Missouri SIP requirements previously adopted by the state, and imposes no new requirements. Therefore, the Administrator certifies that it does not have a significant impact on any small

entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

C. Unfunded Mandates

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

The EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action authorizes and approves into the Missouri SIP requirements previously adopted by the state, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401-7671q.

Dated: June 20, 1997.

William Rice,

Acting Regional Administrator.

[FR Doc. 97-17372 Filed 7-1-97; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION
AGENCY**

[OPP-300503; FRL-5722-3]

40 CFR Parts 180 and 186

2070-AC18

**Revocation of Tolerances for
Commodities No Longer Regulated for
Pesticide Residues**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This notice proposes to revoke tolerances for pesticide residues in or on livestock feed commodities that have been removed from the list of significant livestock feed commodities in Table I of Pesticide Assessment Guideline 860.1000. In implementing the Federal Food, Drug, and Cosmetic Act (FFDCA), EPA does not require data on or set individual tolerance levels for minor, non-significant livestock animal commodities. As explained in this document, EPA considers residues in minor, non-significant livestock feed commodities to be covered by the tolerances for the pesticide on the principal commodities of a crop.

DATES: Written comments must be submitted to EPA by September 2, 1997.

ADDRESSES: By mail, submit comments to the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, deliver comments to room 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under Unit V. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) 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 to the submitter. **FOR FURTHER INFORMATION CONTACT:** By mail: Jeff Morris, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and

e-mail address: Crystal Station #1, 3rd floor, 2800 Crystal Drive, Arlington, VA (703) 308-8029; e-mail: morris.jeffrey@epamail.epa.gov.
SUPPLEMENTARY INFORMATION:

I. Legal Authority

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, 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 raw agricultural commodities and processed foods pursuant to section 408 of the FFDCA (21 U.S.C. 346(a), as amended). 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 (21 U.S.C. 342). For a pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances or exemptions under the FFDCA, but also must be registered under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136a(3)(a)).

II. Regulatory Background

Most agricultural crops and their corresponding raw agricultural and processed commodities can be, and are, fed to livestock. EPA, however, only requires pesticide residue data on, and sets individual tolerances for, significant livestock feed commodities. EPA considers a livestock feed commodity to be significant if it has the potential to contribute to the human diet (through the consumption of livestock commodities) more than a negligible quantity of pesticide residue. EPA's listing of significant food and feed commodities (raw and processed) can be found in Table I of Pesticide Assessment Guideline 860.1000. Because of minor nomenclature variations, the tolerances as written in title 40 of the Code of Federal Regulations may not coincide precisely with the commodity names as listed in Table I of Pesticide Assessment Guideline 860.1000.

EPA revised Table I (formerly Table II) in June of 1994 because of the significant changes in agricultural, processing, and feeding practices that had occurred over the past decade. The June 1994 update was further revised in September of 1995 in order to reflect the most recent data and to address comments received in response to the

June 1994 update. This September 1995 revision of Table I resulted in the removal of numerous commodities from the table. Data used to update Table I came from such sources as Office of Pesticide Programs (OPP) files, the U.S. Department of Agriculture (USDA), academia, industry, and trade associations throughout the United States. In the June 1994 revisions, EPA used the following criteria to decide what feedstuffs are considered "significant": (1) The annual U.S. production of a particular raw agricultural commodity (RAC) (e.g., wheat grain, or wheat straw) is greater than or equal to 250,000 tons and the maximum amount in the livestock diet is greater than or equal to 10 percent, or (2) the commodity is grown mainly as a feedstuff. Processed commodities with less than 250,000 tons annual U.S. production were considered significant feeds in the 1994 revisions if the RAC from which they were derived exceeded 250,000 tons. For the September 1995 revisions to Table I, EPA in response to comments and in consultation with USDA and industry representatives amended the criteria as follows: The amount of a commodity (raw agricultural or processed) produced or diverted for use as a feedstuff is at least 0.04 percent of the total annual tonnage of all feedstuffs available for livestock utilization in the United States. For feedstuffs less than 0.04 percent of the total estimated annual tonnage of all feedstuffs available, the 1995 revisions stated that those feedstuffs are to be included in Table I and therefore considered to be significant if: (a) the feedstuff is listed and routinely traded on the commodities exchange markets; (b) there is regional production, seasonal considerations, or an incident history for use of the feedstuff; or the feedstuff is grown exclusively for livestock feeding in quantities greater than 10,000 tons (0.0015 percent of the total estimated annual tonnage of all feedstuffs available in the United States). EPA determined that any livestock feed commodities that met these criteria for exclusion from the list of significant feed commodities were likely to contribute no greater than a negligible amount of pesticide residue to the human diet. Moreover, EPA believes that the residue contribution from livestock feed commodities judged to be insignificant will contribute a negligible amount of pesticide residue to the human diet relative to the residues contributed by other portions of the same crop.

EPA expects that Table I, after being revised based on the above criteria, now

accounts for greater than 99 percent of the available tonnage (on a dry-matter basis) of feedstuffs used in the domestic production of greater than 95 percent of beef and dairy cattle, poultry, swine, milk, and eggs.

III. Proposed Actions

In this document EPA proposes to revoke the tolerances for specific livestock feed items dropped from Table I due to a determination that they were not significant livestock feed commodities.

It is not EPA's intention that this proposed revocation should have the effect of rendering the affected commodities adulterated due to the absence of a tolerance. Rather, EPA interprets its tolerance regulation for the principal RAC of a crop as covering any insignificant livestock feed commodities (i.e. those not on Table I) of that crop as provided below. Pesticide residues in an insignificant livestock feed commodity would be in compliance with the tolerance for the RAC of the same crop if the residues in the RAC from which the feedstuff is derived or with which it is associated (e.g., straw harvested at the same crop stage as grain, the RAC) are at or below the appropriate tolerance level. If no information is available regarding the residue level in the RAC from which the feedstuff is derived or with which it is associated, then pesticide residues in an insignificant livestock feed commodity would be considered in compliance with the RAC tolerance of that crop if the residue level in the insignificant livestock feed commodity is consistent with the RAC from which the feedstuff is derived or with which it is associated containing residues at or below the appropriate tolerance. This interpretation applies only to insignificant livestock feed commodities.

IV. Effective Dates

These proposed revocations will become effective upon the date of publication in the **Federal Register** of a final rule revoking the tolerances.

V. Public Comment Procedures

EPA invites interested persons to submit written comments, information, or data in response to this proposed rule. EPA will consider all relevant comments. After consideration of comments, EPA will issue a final order. Such order will be subject to objections. Failure to file an objection within the appointed period will constitute waiver of the right to raise in future proceedings issues resolved in the final order.

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket number "[OPP-300503]" (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 (insert docket number). Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

VI. Regulatory Assessment Requirements

This action proposes the revocation of specific tolerance requirements under section 408 of the FFDCA and therefore does not impose any other regulatory requirements. As such, the Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). Since this proposed rule does not impose any requirements, it does not contain any information collections subject to approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or require any other action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency hereby certifies that this proposed rule will not have a significant adverse economic impact on a substantial number of small entities. This determination is based on the fact that this action does not impose any requirements and therefore does not have any adverse economic impacts. In accordance with Small Business Administration (SBA) policy, this determination will be provided to the Chief Counsel for Advocacy of the SBA upon request.

List of Subjects

40 CFR Part 180

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

40 CFR Part 186

Animal feeds, Pesticide and pest.

Dated: June 18, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR parts 180 and 186 be amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.
 - b. Part 180 is amended as follows:
 - i. By removing the phrase "alfalfa, chafe, or seed," wherever it appears in part 180.
 - ii. By removing the phrase "barley, fodder, green," wherever it appears in part 180.
 - iii. By removing the phrase "barley, forage," wherever it appears in part 180.
 - iv. By removing the phrases "barley, forage, green," and the phrase "barley green forage," wherever they appear in part 180.
 - v. By removing the phrases "buckwheat, fodder," and "buckwheat, forage," wherever they appear in part 180.
 - vi. By removing the phrases "lentils, forage," or "lentil, forage," wherever they appear in part 180.
 - vii. By removing the phrases "lupine, hay (PRE-H)," and "lupine, straw (pre-H)," wherever they appear in part 180.
 - viii. By removing the phrases "peanuts, hulls," "peanut, vine hulls," "peanut hulls" or "peanuts (hulls) pre-H," wherever they appear in part 180.

ix. By removing the phrase "peppermint, hay," wherever it appears in part 180.

x. By removing the phrases "safflower, fodder (fodder, forage, and grain)," and "safflower, forage," wherever they appear in part 180.

xi. By removing the phrase "spearmint, hay," wherever it appears in part 180.

xii. By removing the phrase "sunflower, forage," wherever it appears in part 180.

§ 180.106 [Amended]

xiii. In § 180.106, in the entry for "2 parts per million..." revise the phrase "forage, and straw of barley" to read "straw of barley."

§ 180.277 [Amended]

xiv. In § 180.277 revise the phrase "barley (grain, forage, and straw)" to read "barley (grain and straw)."

§ 180.288 [Amended]

xv. In § 180.288 by revising the phrase "barley (fodder, forage, grain and straw)" to read "barley (fodder, grain and straw)."

§ 180.230 [Amended]

xvi. In § 180.230 by removing the phrase "peanut hulls and."

§ 180.236 [Amended]

xvii. In § 180.236 by removing the phrase "0.4 parts per million in or on peanut hulls."

§ 180.361 [Amended]

xviii. In § 180.361 by removing paragraph (b).

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. Part 186 is amended as follows:

i. By removing the phrase "apple, pomace (dry)" wherever it appears in part 186.

ii. By removing the phrase "citrus, molasses," wherever it appears in part 186.

iii. By removing the phrase "corn soapstock" wherever it appears in part 186.

iv. By removing the phrases "grape pomace," "grapes, pomace, dried," "grapes, pomace, (wet and dry)," "grapes, pomace, (wet and dried)," "grape pomace (dry or wet)," "grape pomace (wet)," "grape pomace (dry)," and "grape pomace, wet and dry," wherever they appear in part 186.

v. By removing the phrases "raisin, waste," and "grape, raisin waste," wherever they appear in part 186.

vi. By removing the phrase "hops, spent," wherever it appears in part 186.

vii. By removing the phrase "peanuts, soapstock," wherever it appears in part 186.

viii. By removing the phrase "peanuts, soapstock, fatty acids," wherever it appears in part 186.

ix. By removing the phrase "soapstock" wherever it appears in part 186.

x. By removing the phrase "soybeans, soapstock," wherever it appears in part 186.

xi. By removing the phrase "soybeans, soapstock, fatty acids," wherever it appears in part 186.

xii. By removing the phrase "spent mint hay," wherever it appears in part 186.

xiii. By removing the phrase "sugarcane, bagasse," wherever it appears in part 186.

xiv. By removing the phrase "sunflower, seeds, hulls," wherever it appears in part 186.

xv. By removing the phrase "sunflower, seeds, soapstock," wherever it appears in part 186.

xvi. By removing the phrase "tomatoes, pomace, dried," wherever it appears in part 186.

xvii. By removing the phrase "tomatoes, pomace, wet," wherever it appears in part 186.

§ 186.450 [Amended]

xviii. In § 186.450 by removing the phrase "citrus molasses and."

§ 186.3450 [Removed]

xix. By removing § 186.3450.

§ 186.350 [Amended]

xx. In § 186.350 by removing the entry beginning with "125 parts per million...."

§ 186.1650 [Amended]

xxi. In § 186.1650 by removing the entry beginning with "20 parts per million...."

§ 186.4800 [Amended]

xxii. In § 186.4800 by removing the entry beginning with "45 parts per million...."

§ 186.1450 [Amended]

xxiii. In § 186.1450 the entry for "5 parts per million," is amended by removing the phrase "sugarcane bagasse and."

§ 186.2225 [Amended]

xxiv. In § 186.2225 by removing the entry "1.5 parts per million in sugarcane baggase."

§ 186.3350 [Removed]

xxv. By removing § 186.3350.

[FR Doc. 97-17369 Filed 7-1-97; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AE00

Endangered and Threatened Wildlife and Plants: Proposed Establishment of a Nonessential Experimental Population of Grizzly Bears in the Bitterroot Area of Idaho and Montana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to reintroduce the grizzly bear (*Ursus arctos horribilis*), a threatened species, into east-central Idaho and a portion of western Montana. These grizzlies will be classified as a nonessential experimental population pursuant to section 10(j) of the Endangered Species Act of 1973, as amended. Grizzly bear populations have been extirpated from most of the lower 48 United States. They presently occur in populations in the Cabinet/Yaak ecosystem in northwestern Montana and north Idaho, the Selkirk ecosystem in north Idaho and northeastern Washington, the North Cascades ecosystem in northwestern Washington, the Northern Continental Divide ecosystem in Montana, and the Yellowstone ecosystem in Montana, Wyoming, and Idaho. The purpose of this reintroduction is to reestablish a viable grizzly bear population in the Bitterroot ecosystem in east-central Idaho and adjacent areas of Montana, one of six grizzly recovery areas identified in the Grizzly Bear Recovery Plan. Potential effects of this proposed rule are evaluated in a draft Environmental Impact Statement released concurrently with the publication of this proposed rule. This grizzly bear reintroduction does not conflict with existing or anticipated Federal agency actions or traditional

public uses of wilderness areas or surrounding lands.

DATES: Comments from all interested parties must be received by October 9, 1997.

ADDRESSES: Comments or other information may be sent to Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, University Hall, Room 309, University of Montana, Missoula, Montana 59812. The complete file for this proposed rule is available for inspection, by appointment during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen, at the above address, or telephone (406) 243-4903.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service (Service) also will hold public hearings to obtain additional verbal and written information. Hearings are proposed to be held in Boise, Lewiston, and Salmon, Idaho; and Helena, Missoula, and Hamilton, Montana. The location, dates, and times of these hearings will be announced in the **Federal Register** at least 15 days prior to the first hearing, and in local newspapers.

Background

1. Legal

The Endangered Species Act Amendments of 1982, Public Law 97-304, made significant changes to the Endangered Species Act (Act) of 1973 as amended (16 U.S.C. 1531 *et seq.*), including the creation of section 10(j) which provides for the designation of specific animals and populations as "experimental." Under previous authorities in the Act, the Service was permitted to reintroduce a listed species into unoccupied portions of its historic range for conservation and recovery purposes. However, local opposition to reintroduction efforts from certain parties concerned about potential restrictions, and prohibitions on Federal and private activities contained in sections 7 and 9 of the Act, reduced the utility of reintroduction as a management tool.

However, under section 10(j), a listed species reintroduced outside of its current range, but within its historic range, may be designated, at the discretion of the Secretary of the Interior (Secretary), as "experimental." This designation increases the Service's flexibility and discretion in managing reintroduced endangered species because such experimental animals may be treated as a threatened species. The Act requires that animals used to form an experimental population be

separated geographically from nonexperimental populations of the same species.

Additional management flexibility is possible if the experimental population is found to be "nonessential" to the continued existence of the species in question. Section 10(j) of the Act states that nonessential experimental animals are not subject to the formal consultation provision of the Act unless they occur on land designated as a national wildlife refuge or national park. Individual animals within nonessential experimental populations located outside national parks or national wildlife refuges are treated, for purposes of section 7 of the Act, except for subsection 7(a)(1), as if they were only proposed for listing under section 4 of the Act. Activities undertaken on private lands are not affected by section 7 of the Act unless they are funded, authorized, or carried out by a Federal agency.

Specimens used to establish an experimental population may be removed from a source or donor population, provided their removal is not likely to jeopardize the continued existence of the species and appropriate permits have been issued in accordance with 50 CFR 17.22. Grizzly bears (*Ursus arctos horribilis*) for this proposed reintroduction will be obtained from Canadian and United States grizzly populations with permission from the Canadian and Provincial governments and concurrence from the appropriate State officials. Grizzly bears are common in western Canada (10,000 to 11,000 in British Columbia) and Alaska (an estimated 30,000 to 35,000). An estimated 516 exist in the Northern Continental Divide ecosystem in northwestern Montana, and an estimated 245 exist in the Yellowstone ecosystem. No adverse biological impact is expected from the removal of 10-15 grizzly bears from the British Columbia population over a 5-year period. No adverse biological impact is expected from the removal of 10-15 grizzly bears from the Northern Continental Divide and/or Yellowstone ecosystem populations over a 5-year period. Consequently, the Service finds that grizzly bears to be used in the reintroduction effort meet the definition of "nonessential" (50 CFR 17.80 (b)) because the loss of the reintroduced grizzlies is not likely to appreciably reduce the likelihood of survival of the species in the wild.

The grizzly bear was listed as a threatened species in the lower 48 States under the Act in 1975 (40 FR 3173).

2. Biological

This proposed rule deals with the grizzly bear, a threatened species that once ranged throughout most of western North America. An estimated 50,000 grizzly bears roamed the American West prior to European settlement (U.S. Fish and Wildlife Service 1993). However, distribution and population levels of this species have been diminished by excessive human-caused mortality and loss of habitat. Today, only 800 to 1,000 grizzly bears remain in a few isolated populations in Montana, Idaho, Wyoming, and Washington, which represents approximately 2 percent of their historic range in the lower 48 States (U.S. Fish and Wildlife Service 1993).

The natural history of grizzly bears and their ecological role was poorly understood during the period of their eradication in the conterminous United States. As with other large predators, grizzly bears were considered a nuisance and threat to humans. Today, the grizzly bear's role as an important and necessary part of natural ecosystems is better understood and appreciated.

Historically, the grizzly bear was a widespread inhabitant of the Bitterroot Mountains in east-central Idaho and western Montana. Historic grizzly bear range includes national forest lands within and surrounding the Selway-Bitterroot Wilderness Area and Frank Church-River of No Return Wilderness Area on both sides of the Salmon River. The demise of the grizzly from the Bitterroot ecosystem (BE) was due to the actions of humans. Bears were actively killed for their fur, for sport, and to eliminate possible threats to humans and domestic livestock. The last verified death of a grizzly bear in the Bitterroot Mountains occurred in 1932 and the last tracks were observed in 1946 (Moore 1984, 1996). Although occasional unverified reports of grizzly sightings persist in the ecosystem (Melquist 1985), no verified tracks or sightings have been documented in more than 50 years, and currently there is no evidence of any grizzly bears in the BE.

3. Grizzly Bear Recovery Efforts

The reestablishment of a grizzly bear population in the BE will increase the survival probabilities and conservation of the grizzly bear in the lower 48 States. If the experimental population is lost, it will not further decrease the survival probability of the bear in other ecosystems beyond what currently exists. However, if the experimental population is successful it will enhance grizzly bear conservation over the long

term. The Grizzly Bear Recovery Plan was finalized in 1982 (U.S. Fish and Wildlife Service 1982) and called for the evaluation of the Selway-Bitterroot ecosystem as a potential recovery area. An interagency team of grizzly bear scientists concluded the area provided suitable habitat and could support 200–400 grizzly bears (Servheen et al. 1991). In 1991, the Interagency Grizzly Bear Committee subsequently endorsed the BE as a grizzly bear recovery area, and requested that the Service pursue recovery.

In 1992, the Service organized a Technical Working Group to develop a BE chapter to append to the Grizzly Bear Recovery Plan. This interagency group of biologists worked with a citizens' involvement group comprised of local residents and agency personnel to draft a recovery plan chapter. Public comments, including those from local communities in central Idaho and western Montana, were integrated into the final chapter. The Service revised the Grizzly Bear Recovery Plan in 1993 (U.S. Fish and Wildlife Service 1993) and produced the Bitterroot Ecosystem Recovery Plan Chapter (Chapter) as an appendix (U.S. Fish and Wildlife Service 1996). This Chapter called for the reintroduction of a small number of grizzly bears into the BE as an experimental, nonessential population under section 10(j) of the Act and the preparation of an Environmental Impact Statement (EIS) on this proposal. By establishing a nonessential experimental population, more liberal management practices may be implemented to address potential negative impacts or concerns regarding the reintroduction. The Chapter identified a tentative long-term recovery objective of approximately 280 grizzly bears for the BE.

Planning for the reintroduction of grizzly bears into the BE of east-central Idaho and western Montana was initiated in 1993, when the agencies of the Interagency Grizzly Bear Committee requested that an EIS be prepared. The Service formed and funded an interagency team to prepare the EIS. The team included specialists from the Service, U.S. Forest Service, Idaho Department of Fish and Game, Montana Department of Fish, Wildlife and Parks, and the Nez Perce tribe. The Grizzly Bear EIS program emphasized public participation.

A public participation and interagency coordination program was developed to identify issues and alternatives to be considered. A public Notice of Intent (NOI) concerning grizzly bear recovery in the BE, was published in the **Federal Register** on

January 9, 1995 (60 FR 2399). The notice was furnished as required by the National Environmental Policy Act regulations (40 CFR 1501.7) to obtain input from other agencies and the public on the scope of issues to be addressed in the EIS. This NOI asked the public to identify issues that should be addressed in the draft EIS. A few days earlier the Service also had issued a news release announcing the beginning of the EIS process and the start of an EIS on grizzly bear reintroduction into the BE.

Eight preliminary issues were identified in March 1995 from scoping meetings for the Chapter and the NOI to prepare an EIS. Three preliminary alternatives also were identified and published in a Scoping of Issues and Alternatives brochure. This brochure was mailed to 1,100 people and distributed at seven open houses. The brochure gave background information, described the purpose and need of the proposed action, listed preliminary issues and alternatives, and explained how to become involved in the EIS process. People were asked to identify issues and alternatives related to grizzly bear reintroduction into the BE. On June 5, 1995, a notice was published in the **Federal Register** initiating the formal scoping process with a 45-day comment period (60 FR 29708). A news release was sent to the print, radio, and television media in western Montana and Idaho on June 26, 1995, announcing the dates and locations for public open houses. Public issue scoping was initiated by the Service by mailing a brochure that detailed the EIS process.

From July 5–11, 1995, seven public scoping sessions in the form of open houses were held in Grangeville, Orofino, and Boise, Idaho; Missoula, Helena, and Hamilton, Montana; and in Salt Lake City, Utah. At the open houses, people could watch a 5-minute introductory video about the proposed action of reintroducing a nonessential experimental population and talk with representatives of the Service, U.S. Forest Service, and State Fish and Game agencies about grizzly bears, their recovery, and the EIS process. Those who attended the open houses received copies of the issue and alternative scoping brochure and question-and-answer booklet. They were encouraged to leave written comments with agency personnel or mail their comments later. Verbal comments or questions were heard and responded to by the agency representatives, but verbal testimony was not formally recorded. More than 300 people attended these scoping sessions and offered comments on the proposal, the preliminary issues and

alternatives, and voiced their opinions on grizzly bears and reintroduction. The scoping comment period was extended 30 days (from July 20 to August 21, 1995). On July 25 a press release was sent to local and national media to announce the extension. This extension was requested by numerous public interests with varied opinions on this complex topic.

Written public comments on issues and alternatives were solicited at the open houses and through the media. More than 3,300 written comments were received from individuals, organizations, and government agencies. These comments arrived in over 565 letters, open house meeting notes, six petitions, and six form letters or postcards. Public comments typified the strong polarization of concerns regarding grizzly bear management. Approximately 80 percent of written responses were from residents of counties in Montana and Idaho adjacent to the proposed reintroduction area. Major concerns raised included public safety, impacts of grizzly bears on existing land uses, travel corridors and linkages, nuisance bears and their control, and depredation by bears on domestic livestock and native ungulates.

Hearings and a public comment period will be conducted after the release of the draft EIS and proposed rule to obtain public input.

4. Reintroduction Site

The Service proposes to reintroduce grizzly bears into the BE of east-central Idaho in the Selway Bitterroot Wilderness on Federal lands managed by the U.S. Forest Service. The Bitterroot location was selected as a site for an experimental population of grizzly bears because of the following factors. The area known as the BE is centered around the Wilderness Areas of central Idaho, while a small portion extends eastward over the crest of the Bitterroot Mountains into Montana. It includes about 67,526 square kilometers (sq km) (26,072 square miles (sq mi)) of contiguous national forest lands in central Idaho and western Montana. These include portions of the Bitterroot, Boise, Challis, Clearwater, Nez Perce, Payette, Sawtooth, Salmon, and Panhandle National Forests in Idaho, and the Bitterroot and Lolo National Forests in western Montana. The core of the ecosystem contains three wilderness areas including the Frank Church-River of No Return, Selway-Bitterroot, and Gospel Hump. These areas provide approximately 15,793 sq km (6,098 sq mi) of grizzly bear habitat. Grizzly bears would only be reintroduced into the Selway-Bitterroot Wilderness Area

unless the Citizen Management Committee (Committee) determines that reintroduction in the River of No Return Wilderness is appropriate. Specific release sites that have high quality bear habitat and low likelihood of human encounters would be identified. The area is also geographically separate from other existing grizzly bear populations in Idaho and Montana. Thus, any grizzly bears documented inside the Idaho experimental population area would probably be from reintroduction efforts rather than naturally dispersing extant grizzly populations from northern Idaho or northwestern Montana.

Because reintroduced grizzly bears will be classified as a nonessential experimental population, the Service's management practices can reduce local concerns about excessive government regulation on private lands, uncontrolled livestock depredations, excessive big game predation, and the lack of State government and local citizen involvement in the program.

Establishment of grizzly bears in the BE of central Idaho will initiate recovery in one of the six ecosystems identified as having the potential to provide adequate habitat to maintain the grizzly bear as a viable and self-sustaining species, which will further the conservation of the species and assist in the attainment of the goals of the Grizzly Bear Recovery Plan (U.S. Fish and Wildlife Service 1993).

5. Reintroduction Protocol

The proposed grizzly bear reintroduction project would be undertaken by the Service in cooperation with the U.S. Forest Service, other Federal agencies, the States of Idaho and Montana, the Nez Perce Tribe, and entities of the Canadian government. To obtain grizzly bears, the Service will enter into formal agreements with the Canadian and Provincial governments and/or resource management agencies and the State of Montana.

The BE reintroduction program proposes trapping 15–25 subadult male and female grizzly bears over a 5-year period from areas in Canada (in cooperation with Canadian authorities) and the United States that presently have populations of grizzly bears living in habitats that are similar to those found in the BE. Only bears with no history of conflict with people will be reintroduced. Bears will be captured and reintroduced at the time of year that will optimize their survival. This would likely occur when grizzly bear food supplies in the BE are optimum. Bears would be transported to east-central Idaho, given any necessary veterinary

care, and fitted with radio collars so that they can be monitored by radiotelemetry. Individual reintroduced grizzly bears would be monitored to determine their movements and how they use their habitat, and to keep the public informed of general bear locations and recovery efforts. Bears would be placed close enough to each other to create a "colony" or population of bears, providing a basis from which to expand in numbers.

The Service will continue to ask private landowners and agency personnel in or around the BE to immediately report any grizzly bear observations to the Service or other authorized agencies. An extensive information and education program will be employed to discourage the taking of grizzly bears by the public. Public cooperation will be encouraged to ensure close monitoring of the grizzly bears and quick resolution of any conflicts that might arise. Specific information on grizzly bear reintroduction procedures can be found in Appendix 6, "Scientific Techniques for the Reintroduction of Grizzly Bears," in the draft Bitterroot Grizzly Bear Recovery EIS (U.S. Fish and Wildlife Service 1997).

Status of Reintroduced Populations

In accordance with section 10(j) of the Act, the Service proposes to designate this reintroduced population of grizzly bears as nonessential experimental. Such designation would allow these grizzly bears to be treated as a species proposed for listing for the purposes of section 7 of the Act. This allows the Service to establish a less restrictive special rule rather than using the general prohibitions which might otherwise apply to threatened species. The biological status of the grizzly and the need for management flexibility resulted in the Service proposing to designate the grizzly bears reintroduced into east-central Idaho as "nonessential." This designation, together with other protective measures, will contribute to the conservation and recovery of the grizzly bear in east-central Idaho and western Montana.

The Service finds that protective measures and management practices under this proposed rulemaking are necessary and advisable for the conservation and recovery of the grizzly and that no additional Federal regulations are required. The Service also finds that the nonessential experimental status is appropriate for grizzly bears taken from wild populations and released into the BE of east-central Idaho. The nonessential status for such grizzlies allows for

additional management flexibility. Formal section 7 consultation would not be required for any proposed Forest Service activity in the BE as a result of the experimental reintroduction of bears, and the requirements of section 7(a)(2) would not apply. Presently, there are no conflicts envisioned with any current or anticipated management actions of the U.S. Forest Service or other Federal agencies in the area. The national forests are beneficial to the reintroduction effort in that they form a natural buffer to private properties and are typically managed in a manner compatible for grizzly bears and other wildlife. The Service finds that the more informal section 7(a)(4) conferencing requirements associated with the nonessential designation do not pose a threat to the recovery effort and continued existence of the grizzly bear.

Most of the reintroduction area is remote and sparsely inhabited wild lands. However, there are some risks to grizzly recovery associated with take of grizzlies in regard to other land uses and various recreational activities. Potential threats are hunting, trapping, animal damage control activities, and high speed vehicular traffic. Hunting, trapping, and USDA Animal Damage Control programs are prohibited or strictly regulated by State and Federal law and policy. There are very few paved or unpaved roads in the proposed reintroduction area or immediately outside of it. The unpaved roads typically have low vehicle traffic, and are constructed for low speeds and used only seasonally. Thus, grizzlies should encounter vehicles and humans infrequently. In accordance with existing labeling, the use of toxicants lethal to grizzlies is prohibited. Overall, the possible risks and threats that could impact the success of the reintroduction effort are thought to be minimal.

Location of Experimental Population

The proposed release site for reintroducing grizzly bears into east-central Idaho is on national forest land in the Selway-Bitterroot Wilderness Area. The Service would designate the Bitterroot Grizzly Bear Recovery Area (Recovery Area) (approximately 14,983 sq km; 5,785 sq mi) to consist of the Selway-Bitterroot Wilderness and the Frank Church-River of No Return Wilderness. This is the area where grizzly bear recovery would be emphasized. The Bitterroot Grizzly Bear Experimental Population Area (Experimental Population Area), which includes most of east-central Idaho and part of western Montana, would be established by the Service under authority of section 10(j) of the Act. This

approximately 65,113 sq km (25,140 sq mi) area would include the area bounded by U.S. Highway 93 from Missoula, Montana, to Challis, Idaho; Idaho Highway 75 from Challis to Stanley, Idaho; Idaho Highway 21 from Stanley to Lowman, Idaho; Idaho Highway 17 from Lowman to Banks, Idaho; Idaho Highway 55 from Banks to New Meadows, Idaho; U.S. Highway 95 from New Meadows to Coeur d'Alene, Idaho; and Interstate 90 from Coeur d'Alene, Idaho, to Missoula, Montana. Much of the Experimental Population Area has high-quality bear habitat with low likelihood of conflicts between grizzly bears and humans.

Management

The special rule would authorize a 15-member Citizen Management Committee (Committee) to be appointed by the Secretary in consultation with the Governors of Idaho and Montana, and the Nez Perce tribe. This Committee would implement the Bitterroot recovery chapter in the Grizzly Bear Recovery Plan and would be authorized management implementation responsibility by the Secretary, for the Bitterroot grizzly bear nonessential experimental population. All decisions of the Committee must lead to recovery of the grizzly bear in the BE. The Committee must consult with scientists to ensure that scientific information is considered in its decision making. The members would serve 6-year terms, although appointments may initially be of lesser terms to ensure staggered replacement. The members would consist of seven individuals appointed by the Secretary based on the recommendations of the governor of Idaho, five members appointed by the Secretary based on the recommendations of the Governor of Montana, one member appointed by the Secretary based on the recommendation of the Nez Perce Tribe, one member representing the U.S. Forest Service appointed by the Secretary of Agriculture or his/her designee, and one member representing the Service appointed by the Secretary or his/her designee. Among the members recommended by the Governors of Idaho and Montana would be a representative from each State fish and game agency. If either Governor fails to make recommendations, the Secretary (or his/her designee) will accept recommendations from interested parties on the Governor's behalf. The Secretary would solicit recommendations from the Nez Perce Tribe and would appoint one member from the Nez Perce Tribe. The Committee is to consist of a cross-

section of interests reflecting a balance of viewpoints, be selected for their diversity of knowledge and experience in natural resource issues, and for their commitment to collaborative decision making. The Committee is to be selected from communities within and adjacent to the recovery and experimental population areas.

The Bitterroot Chapter of the Grizzly Bear Recovery Plan contains a recovery goal for the Bitterroot area. The Committee could recommend a revised recovery goal, based on scientific advice, once sufficient information is available. Any revised recovery goals developed by the Committee would require public review appropriate for revision of a recovery plan. The recovery goal for the Bitterroot grizzly bear population would be consistent with the habitat available within the recovery area and the best scientific and commercial data available. Grizzly bears outside the recovery area and within the experimental population area would contribute to meeting the recovery goal if there were reasonable certainty for their long-term occupancy in such habitats outside the recovery area. The Committee would develop a process for obtaining the best biological, social, and economic data, which would include an explicit mechanism for peer-reviewed, scientific articles to be submitted to and considered by the Committee, as well as periodic public meetings (not less than every 2 years) in which qualified scientists could submit comments to and be questioned by the Committee. Using the best scientific evidence available, and standards and criteria developed by the agencies and the Committee, the Committee would determine if the bear reintroduction was successful after a minimum period of 10 years. If, based on these criteria and recommendations by the Committee, the Secretary after consultation with the Committee, the States of Idaho and Montana, the Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife, and Parks, and the Nez Perce Tribe, concludes the reintroduction has failed, the experimental reintroduction would be terminated.

The Secretary would review the plans and efforts of the Committee. If the Secretary determines, through his/her representative(s) on the Committee, that the decisions of the Committee, the management plans, or the implementation of those plans are not leading to the recovery of the grizzly bear within the experimental population area, the Secretary's representative on the Committee will solicit from the Committee a determination whether the

decision, the plan, or implementation of components of the plan are leading to recovery. Notwithstanding a determination by the Committee that a decision, plan, or implementation of a plan are leading to recovery of the grizzly bear within the experimental population area, the Secretary, who necessarily retains final responsibility and authority for implementation of the Act, may find that the decision, plan, or implementation of a plan are inadequate for recovery and may resume management responsibility. In such case the Committee would be disbanded and all requirements identified in this rule regarding the Committee would be automatically nullified. Otherwise, the Committee would continue until the recovery objectives have been met and the Secretary completed delisting of the Bitterroot population.

Public opinion surveys, public comments on grizzly bear management planning, and the positions taken by elected officials indicate that grizzly bears should not be reintroduced without assurances that current uses of public and private lands will not be disrupted by grizzly bear recovery activities. The recovery of grizzly bears would be emphasized in the Recovery Area, but bears moving outside the recovery area would be accommodated through management provisions in the special rule and through the management plans and policies developed by the Committee, unless potential conflicts were significant and could not be corrected.

Grizzly bear management would allow for resource extraction activities to continue without formal section 7 consultation under section 7(a)(2) of the Act. All section 9 "takings" provisions under the Act for the nonessential experimental population of grizzly bears in the Bitterroot ecosystem are included in this special rule. The Committee would be responsible for recommending changes in land-use standards and guidelines as necessary for grizzly bear management. People could continue to kill grizzly bears in self-defense or in defense of others, with the requirement that such taking be reported within 24 hours to appropriate authorities. Following the issuance of a permit by the Service, a person would be allowed to harass a grizzly bear attacking livestock (cattle, sheep, horses, and mules) or bees. A livestock owner may be issued a permit to kill a grizzly bear killing or pursuing livestock on private lands if the response protocol established by the Committee has been satisfied and it has not been possible to capture the bear or deter depredations through agency efforts. If there were

significant conflicts between grizzly bears and livestock within the experimental population area, these could be resolved in favor of livestock by capture or elimination of the bear depending on the circumstances. There would be no Federal compensation program, but compensation from existing private funding sources would be encouraged. Animal control toxicants lethal to bears are currently not used on public lands within the recovery and experimental population areas. The Service anticipates that ongoing animal damage control activities would not be affected by grizzly bear recovery. Any conflicts or mortalities associated with these activities would result in review by the Committee and any necessary changes would be recommended by the Committee.

The Idaho Department of Fish and Game, Montana Department of Fish, Wildlife, and Parks, and the U.S. Forest Service, in consultation with the Service and the Nez Perce Tribe, would exercise day-to-day management responsibility within the experimental population area while implementing the Grizzly Bear Recovery Plan Chapter for the BE, and the special rules, policies, and plans of the Committee.

The experimental population area currently does not support any grizzly bears. It is also unlikely that grizzlies from northwestern Montana have arrived in central Idaho. No evidence of grizzly bears exists in the BE. Thus, the Service has determined that the east-central Idaho reintroduction area is consistent with provisions of section 10(j) of the Act; specifically, that experimental grizzly bears must be geographically separate from other nonexperimental populations. Grizzlies dispersing into areas outside of the experimental population area would receive all the protections of a threatened species under the Act.

Although the Service has determined that there is no existing grizzly bear population in the recovery area that would preclude reintroduction and establishment of an experimental population in Idaho, the Service will continue to monitor for the presence of any grizzly bears naturally occurring in the area. Prior to any reintroduction, the Service would evaluate the status of any grizzlies found in the experimental population area.

Once this special rule is in effect and grizzly bears have been released into the recovery area, any grizzly bears found within the experimental area, including any bears that move in from outside the experimental area, will be classified as part of the experimental population. The special rule would remain in effect

unless the Secretary determines that the actions of the Committee are not resulting in recovery of the grizzly bear in the BE, in which case the Secretary will resume lead management implementation responsibility for the BE experimental grizzly bear population. The Secretary's decision will be based on the best scientific and commercial data available. Prior to resumption of lead management implementation responsibility, the Secretary will provide the Committee with recommended corrective actions and a 6-month time frame in which to accomplish those actions.

The Committee could review existing grizzly bear standards and guidelines utilized by the U.S. Forest Service and other agencies and landowners. They will be deemed adequate pending review by the Committee, and the Committee may recommend changes to the U.S. Forest Service and other agencies and landowners. Existing laws and regulations governing land management activities will promote grizzly bear recovery. The Committee's annual reviews of grizzly bear mortalities will be the primary mechanism to assess the adequacy of existing management techniques and standards.

The Committee will also be expected to develop grizzly bear guidance for proper camping and sanitation within the experimental population area. Existing grizzly bear camping and sanitation procedures developed in other ecosystems containing grizzly bears will serve as a basis for such guidelines.

The Committee also will be asked to develop specific guidance for responses to grizzly/human encounters, livestock depredations, damage to lawfully present property, and other grizzly/human conflicts within the experimental population area. If there are significant conflicts between grizzly bears and livestock within the experimental area, these could be resolved in favor of the livestock by capture or elimination of the bear depending on the circumstances. No restrictions on trail systems in front or backcountry areas are anticipated, and policy changes on trail restrictions would be recommended by the Committee as necessary.

The Committee will revise mortality limits, population determinations, and other criteria for recovery as appropriate. The Committee also will be tasked with developing strategies to emphasize recovery in the recovery area and to accommodate grizzly bears inside the experimental area. If grizzly bears range outside the recovery area, and if

conflicts occur that are both significant and cannot be corrected as determined by the Committee, then the Committee will be expected to develop strategies to discourage grizzly bear occupancy in reoccurring trouble spots within the experimental population area. No changes in existing livestock allotments are anticipated. Unless the Committee determines otherwise, this special rule provides that private lands outside the national forest boundary in the Bitterroot Valley, Montana, comprise an area where any human/grizzly conflicts would be considered significant and not correctable. Grizzly bear occupancy will be discouraged in these areas outside the national forest boundary in the Bitterroot Valley, Montana, and grizzly bears will be captured and returned to the recovery area. The purpose of this is to ensure that grizzly bears do not move onto the private lands in the Bitterroot Valley, Montana, where human conflict potential would be high.

The Committee will also be tasked with reviewing all human-caused mortalities during the first 5 years to determine whether new measures for avoiding future occurrences are required. For example, the Committee could work with the Fish and Game Departments in both Idaho and Montana to develop solutions to minimize conflicts between grizzly bears and black bear hunting, should such conflicts occur.

The Committee will be asked to establish standards for determining whether or not the experimental reintroduction has been successful. These standards will reflect the success or failure of the program and cannot be measured in less than 10 years. General examples for such standards for failure could include—no bears remaining in the experimental population area for no apparent reason; and the relocated bears exhibiting unsuccessful reproduction as evidenced by no cubs of the year or yearlings.

All reintroduced grizzly bears designated as nonessential experimental will be removed from the wild and the experimental population status and regulations revoked if legal actions or lawsuits change their status to threatened or endangered under the Act.

Based on the above information, and utilizing the best scientific and commercial data available (in accordance with 50 CFR 17.81), the Service finds that reintroducing grizzly bears into the BE will further the conservation and recovery of the species.

Public Comments Solicited

The Service intends that any final rule resulting from this proposal be as accurate and effective as possible. Therefore, comments from the public, States, tribes, other concerned government agencies, the scientific community, industry, or any other party concerning this proposed rule are hereby solicited. Comments must be received within 90 days of publication of this proposed rule in the **Federal Register**.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service. Such communications may lead to a final rule that differs from this proposal.

The Service also will hold public hearings to obtain additional verbal and written information. Hearings are proposed to be held in Boise, Orofino, and Salmon, Idaho; and Helena, Missoula, and Hamilton, Montana. The location, dates, and times of these hearings will be announced in the **Federal Register** at least 15 days prior to the first hearing, and in local newspapers.

National Environmental Policy Act

A draft EIS under the National Environmental Policy Act is available to the public (see **ADDRESSES**). This proposed rule is an implementation of the proposed action and does not require revision of the EIS on grizzly bear recovery in the BE.

Required Determinations

This proposed rule was not subject to review by the Office of Management and Budget under Executive Order 12866. Potential economic effects of this proposed rulemaking could occur in five areas—(1) effects on hunter harvest, (2) effects on livestock depredation, (3) effects on land use restrictions, (4) effects on visitor use, and (5) effects on existence values (U.S. Fish and Wildlife Service 1997). Because reintroduction of grizzly bears to the BE will not have any significant effect on huntable populations of ungulates in the BE, no economic impact related to hunter harvest is expected. Grizzly depredation on domestic livestock would likely be minimal during the estimated 50 years required to achieve full grizzly recovery in the BE. After recovery is achieved, depredation incidents involving livestock are expected to be between 4 and 7 cattle and between 0 and 44 sheep per year, with these losses spread over the entire BE area. Therefore, economic impacts due to livestock depredations are estimated at between \$2,260 and

\$8,003 per year. No economic impacts due to land use restrictions are expected as a result of this proposed rule because current land management practices for recreational activities, timber harvest, and mineral extraction are compatible with grizzly bear recovery in the BE and this proposed rule does not recommend any changes to current management practices. Survey results show that while visitation to the BE by local residents would likely decrease as a result of grizzly reintroduction, visitation by regional and national residents would increase, balancing out the decline in local visitation. Therefore, no significant economic impact is expected as a result of changes in visitor use. Expected effects on existence values were derived through estimation of how much individuals would be willing to contribute to a fund to support (or oppose) grizzly reintroduction in the BE as described in this proposed rule. Using this method, the Service estimates that net social benefits, including existence values, as a result of this proposed rule would be very large, on the order of \$40–\$60 million per year. This large estimate reflects the large percentage of the U.S. population that supports grizzly recovery and the fact that the grizzly bear is an extremely high profile wildlife species. Based on the above discussion, the Service concludes that this proposed rulemaking will not result in any significant impact on the U.S. economy.

The rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Also, no direct costs, enforcement costs, information collection, or record-keeping requirements are imposed on small entities by this action and the rule contains no record-keeping requirements, as detailed in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Service has determined and certified pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this proposed rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The Service has further determined that these proposed regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

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Servheen, C., A. Hamilton, R. Knight, B. McLellan. 1991. Report of the technical review team: Evaluation of the Bitterroot and North Cascades to sustain viable grizzly bear populations. Report to the Interagency Grizzly Bear Committee. U.S. Fish and Wildlife Service, Boise, Idaho. 9 pp.

U.S. Fish and Wildlife Service. 1982. Grizzly bear recovery plan. U.S. Fish and Wildlife Service, Denver, Colorado. 195 pp.

U.S. Fish and Wildlife Service. 1993. Grizzly bear recovery plan (revised). U.S. Fish and Wildlife Service, Missoula, Montana. 181 pp.

U.S. Fish and Wildlife Service. 1996. Bitterroot Ecosystem Recovery Plan Chapter—Supplement to the Grizzly Bear Recovery Plan. U.S. Fish and Wildlife Service, Missoula, Montana. 27 pp.

U.S. Fish and Wildlife Service. 1997. Reintroduction of grizzly bears to the Bitterroot Ecosystem. Draft Environmental Impact Statement, Missoula, Montana.

Author: The principal author of this proposed rule is Dr. Christopher Servheen (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, the U.S. Fish and Wildlife Service hereby proposes to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

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

2. It is proposed that § 17.11(h) be amended by revising the existing entry for the “Bear, grizzly (=brown)” under “MAMMALS” and adding a new entry under “Bear, Grizzly (=brown)” to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	*
Bear, Grizzly (=brown) ..	<i>Ursus arctos horribilis</i>	Holarctic	U.S.A., conterminous (lower 48) States, except where listed as an experimental population.	T	1, 2D, 9,—	NA	17.40(b)
Do	do	do	U.S.A. (portions of ID and MT, see 17.84(j)).	XN		NA	17.84()
*	*	*	*	*	*	*	*

3. It is proposed that § 17.84 be amended by adding paragraph (k) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(k) Grizzly bear (*Ursus arctos horribilis*).
 (1) *Definitions.* The definitions set out in § 17.3 apply to this paragraph (k). For purposes of this paragraph—
 (i) The term *Bitterroot Grizzly Bear Experimental Population Area* means that area delineated in paragraph (k)(9) of this section, which includes the *Bitterroot Grizzly Bear Recovery Area*, and within which management plans developed as part of the Citizen Management Committee described in paragraph (k)(12) of this section will be in effect. This area is within the historic range of the grizzly bear.
 (ii) The term *Bitterroot Grizzly Bear Recovery Area* (Recovery Area) means that area delineated in paragraph (k)(10) of this section within which a nonessential experimental population of grizzly bears is to be released. The Recovery Area is within the historic range of the species.
 (iii) The term *Bitterroot Valley* means those private lands lying within the Bitterroot Experimental Population Area outside the Bitterroot National Forest boundary south of U.S. Highway 12 to Lost Trail Pass.
 (iv) The term *Citizen Management Committee* means that Committee delineated in paragraph (k)(12) of this section.
 (v) The term *take* means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. For purposes of this special rule, except for persons engaged in hunting or shooting activities, any person may take grizzly bears in the area defined in paragraph (k)(9) of this section, provided that such take is incidental to, and not the purpose of, an otherwise lawful activity, including activities conducted in

accordance with plans of the Committee, and provided that such taking shall be reported within 24 hours to appropriate authorities as listed in paragraph (k)(5) of this section. Persons lawfully engaged in hunting or shooting activities must correctly identify their target before shooting in order to avoid illegally shooting a grizzly bear. The act of taking a grizzly bear that is wrongly identified as another species may be referred to appropriate authorities for prosecution.
 (2) The grizzly bears to be reintroduced pursuant to this special rule will be nonessential experimental and release of grizzly bears pursuant to this special rule will further the conservation of the species.
 (3) No person may take this species in the Experimental Area, except as provided in paragraphs (k)(1)(v), (4), (5), and (6) of this section.
 (4) Any person with a valid permit issued by the U.S. Fish and Wildlife Service or by the appropriate State or Tribal agency pursuant to a subpermit issued by the U.S. Fish and Wildlife Service under § 17.32 may take grizzly bears in the Experimental Area for scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes. Such permits must be consistent with the Act, with management plans adopted for this population and with applicable State fish and wildlife conservation laws and regulations.
 (5)(i) Persons may take grizzly bears found in the area defined in paragraph (k)(9) of this section in defense of that person's own life or the lives of other persons. Such taking shall be reported within 24 hours as to date, exact location, and circumstances to the U.S. Fish and Wildlife Service, Grizzly Bear Recovery Coordinator, University Hall, Room 309, University of Montana, Missoula, Montana 59812 (406-243-4903), or U.S. Fish and Wildlife Service, Assistant Regional Director for Law

Enforcement, 911 NE 11th Avenue, Portland, Oregon 97232-4181 (503-231-6125), or U.S. Fish and Wildlife Service, Assistant Regional Director for Law Enforcement, P.O. Box 25486, DFC, Denver, Colorado 80225 (303-236-7540), and either the Idaho Department of Fish and Game, P.O. Box 25, Boise Idaho 83707 (208-334-3700), or the Montana Department of Fish, Wildlife and Parks, 1420 E. Sixth Avenue, Helena, Montana 59620 (406-444-2535), and Nez Perce Tribal authorities (as appropriate).
 (ii) Any livestock owner may be issued a permit by the U.S. Fish and Wildlife Service, the Idaho Department of Fish and Game, or the Montana Department of Fish, Wildlife and Parks and appropriate Tribal authorities to harass grizzly bears found in the area defined in paragraph (k)(9) of this section that are actually harming or killing livestock, provided that all such harassment is by methods that are not lethal or physically injurious to the grizzly bear and such harassment is reported within 24 hours as to date, exact location, and circumstances to the U.S. Fish and Wildlife Service, Grizzly Bear Recovery Coordinator, University Hall, Room 309, University of Montana, Missoula, Montana 59812 (406-243-4903), or U.S. Fish and Wildlife Service, Assistant Regional Director for Law Enforcement, 911 NE 11th Avenue, Portland, Oregon 97232-4181 (503-231-6125), or U.S. Fish and Wildlife Service, Assistant Regional Director for Law Enforcement, P.O. Box 25486, DFC, Denver, Colorado 80225 (303-236-7540) and either the Idaho Department of Fish and Game, P.O. Box 25, Boise, Idaho 83707 (208-334-3700), or the Montana Department of Fish, Wildlife and Parks, 1420 E. Sixth Avenue, Helena, Montana 59620 (406-444-2535), and the Nez Perce Tribal authorities (as appropriate).
 (iii) Any livestock owner may be issued a permit by the U.S. Fish and

Wildlife Service, the Idaho Department of Fish and Game, or the Montana Department of Fish, Wildlife and Parks to take grizzly bears on private lands found in the area defined in paragraph (k)(9) of this section to protect livestock actually pursued or being killed on private property, after any response protocol established by the Committee has been satisfied and efforts to capture depredating grizzly bears by U.S. Fish and Wildlife Service or State or Tribal wildlife agency personnel have proven unsuccessful, provided that all such taking shall be reported as to date, exact location, and circumstances within 24 hours to the U.S. Fish and Wildlife Service, Grizzly Bear Recovery Coordinator, University Hall, Room 309, University of Montana, Missoula, Montana 59812 (406-243-4903), or U.S. Fish and Wildlife Service, Assistant Regional Director for Law Enforcement, 911 NE 11th Avenue, Portland, Oregon 97232-4181 (503-231-6125), or U.S. Fish and Wildlife Service, Assistant Regional Director for Law Enforcement, P.O. Box 25486, DFC, Denver, Colorado 80225 (303-236-7540) and either the Idaho Department of Fish and Game, P.O. Box 25, Boise Idaho 83707 (208-334-3700), or the Montana Department of Fish, Wildlife and Parks, 1420 E. Sixth Avenue, Helena, Montana 59620 (406-444-2535), and the Nez Perce Tribal authorities (as appropriate).

(6) Any authorized employee or agent of the U.S. Fish and Wildlife Service or appropriate State wildlife agency or Nez Perce Tribe who is lawfully designated for such purposes, when acting in the course of official duties, may take a grizzly bear from the wild in the Experimental Areas if such action is necessary to:

- (i) Aid a sick, injured, or orphaned grizzly bear;
- (ii) Dispose of a dead grizzly bear, or salvage a dead grizzly bear that may be useful for scientific study;
- (iii) Take a grizzly bear that constitutes a demonstrable but nonimmediate threat to human safety or that is responsible for depredations to lawfully present domestic animals or other personal property, if it has not been possible to otherwise eliminate such depredation or loss of personal property and after it has been demonstrated that it has not been possible to eliminate such threat by live capturing and releasing the grizzly bear unharmed in the area defined in paragraph (k)(10) of this section or other areas approved by the Committee;
- (iv) Move a grizzly bear for genetic purposes;
- (v) Relocate a grizzly bear to avoid conflict with human activities;

(vi) Relocate grizzly bears within the Experimental Area to improve grizzly bear survival and recovery prospects.

(7) No person except those authorized under paragraphs (k)(4) (5) and (6) of this section shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any grizzly bear or part thereof from the Experimental Population Area taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations or the Endangered Species Act.

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraphs (k) (3) and (7) of this section.

(9) *Bitterroot Grizzly Bear Experimental Population Area*. The boundaries of the Bitterroot Grizzly Bear Experimental Population Area are delineated by U.S. 93 from Missoula, Montana, to Challis, Idaho; Idaho 75 from Challis to Stanley, Idaho; Idaho 21 from Stanley to Lowman, Idaho; State Highway 17 from Lowman to Banks, Idaho; Idaho 55 from Banks to New Meadows, Idaho; U.S. 95 from New Meadows to Coeur d'Alene, Idaho; and Interstate 90 from Coeur d'Alene to Missoula, Montana. Grizzly bears within both the Recovery Area as defined in (k)(10) of this section and within the Experimental Area will be accommodated through management provisions provided for in this rule and through the management plans and policies developed by the Committee. All grizzly bears found in the wild within the boundaries of this paragraph (k)(9) of this section after the first releases will be considered nonessential experimental animals. In the conterminous United States, a grizzly bear that is outside the experimental area (as defined in paragraph (k)(9) of this section) would be considered as threatened unless it is marked or otherwise known to be an experimental animal.

(10) *Bitterroot Grizzly Bear Recovery Area*. The Bitterroot Grizzly Bear Recovery Area consists of the Selway-Bitterroot Wilderness and the Frank Church River of No Return Wilderness. All reintroductions will take place in the Selway-Bitterroot Wilderness unless the Committee determines that reintroduction in the Frank Church River of No Return Wilderness is appropriate. The term "Bitterroot Grizzly Bear Recovery Area" used here identifies the area of recovery emphasis.

(11) *Recovery Goal*. The Bitterroot Chapter of the Grizzly Bear Recovery Plan identifies a tentative recovery goal. This recovery goal may be refined by the

Committee as grizzly bears are reintroduced and occupy suitable habitats in the Experimental Area. When the final recovery goal is met, the Secretary of the Interior intends to publish a proposed rule for the delisting of the grizzly bear population within the Experimental Area in accordance with the requirements of the Act and its regulations.

(12) *Citizen Management Committee*. This Committee shall be authorized management implementation responsibility by the Secretary of the Interior, in consultation with the governors of Idaho and Montana, for the Bitterroot grizzly bear experimental population. As soon as possible after the effective date of this rule, the Committee shall be organized by requesting nominations of citizen members by the governors of Idaho and Montana, the Nez Perce Tribe, and nomination of agency members by represented agencies.

(i) The Committee shall be composed of 15 members serving 6-year terms. Appointments may initially be of lesser terms to ensure staggered replacement. Membership shall consist of seven individuals appointed by the Secretary of the Interior based upon the recommendations of the Governor of Idaho, five members appointed by the Secretary of the Interior based upon the recommendations of the Governor of Montana, one member representing the U.S. Forest Service appointed by the Secretary of Agriculture or his/her designee, and one member representing the U.S. Fish and Wildlife Service appointed by the Secretary of the Interior or his/her designee. Members recommended by the Governors of Idaho and Montana shall be based on the recommendations of the interested parties and shall include at least one representative each from the appropriate State fish and wildlife agencies. If either Governor fails to make recommendations, the Secretary (or his/her designee) shall accept recommendations from interested parties on the Governor's behalf. The Committee shall consist of a cross-section of interests reflecting a balance of viewpoints, be selected for their diversity of knowledge and experience in natural resource issues, and for their commitment to collaborative decision making. The Committee shall be selected from communities within and adjacent to the Recovery and Experimental areas. The Secretary of the Interior shall solicit recommendations from the Nez Perce Tribe and shall appoint one member. The Secretary of the Interior shall fill vacancies as they occur with the appropriate members

based on the recommendation of the appropriate Governor or the Nez Perce Tribe.

(ii) The Committee will be authorized and tasked with:

(A) Developing a process for obtaining the best biological, social, and economic data, which shall include an explicit mechanism for peer-reviewed, scientific articles to be submitted to and considered by the Committee, as well as periodic public meetings (not less than every 2 years) in which qualified scientists may submit comments to and be questioned by the Committee. The Committee will base its decisions upon the best scientific and commercial data available. All decisions of the Committee including components of its management plans must lead toward recovery of the grizzly bear and minimize social and economic impacts.

(B) Soliciting technical advice and guidance from outside experts.

(C) Implementing the Bitterroot chapter of the Grizzly Bear Recovery Plan. Develop management plans and policies, as necessary, for the management of grizzly bears in the Experimental Area. Such management plans and policies will be in accordance with applicable State and Federal laws. The Committee shall give full consideration to the comments and opinions of the U.S. Fish and Wildlife Service, Idaho Department of Fish and Game, and the Montana Department of Fish, Wildlife and Parks, and the Nez Perce Tribe.

(D) Providing means by which the public may participate in, review, and comment on the decisions of the Committee. The Committee must thoroughly consider and respond to public input prior to its decisions.

(E) Developing its internal processes, where appropriate, such as governance, decision making, quorum, officers, meeting schedules and location, public notice of meetings, minutes, etc. Given the large size of the Committee, an affirmative vote by a simple majority is sufficient to approve any Committee decisions.

(F) Requesting staff support from Idaho Department of Fish and Game, Montana Department of Fish, Wildlife and Parks, the U.S. Fish and Wildlife Service, the U.S. Forest Service, other affected Federal agencies, and the Nez Perce Tribe, to perform administrative functions and reimburse Committee members for costs associated with meetings, travel, and incidentals.

(G) Reviewing existing grizzly bear standards and guidelines utilized by the U.S. Forest Service and other agencies and landowners. Existing Forest Plan standards and guidelines, as amended,

will be deemed adequate pending review by the Committee. The Committee reviews of grizzly bear mortalities will be the primary mechanism to assess the adequacy of existing management techniques and standards. If the Committee deems such standards and guidelines inadequate for recovery of grizzly bears, the Committee may recommend changes to the U.S. Forest Service and other agencies and landowners.

(H) Developing grizzly bear guidance for proper camping and sanitation within the Experimental Area. Existing grizzly bear camping and sanitation procedures developed in other ecosystems with grizzly bears will serve as a basis for such guidelines.

(I) Develop response protocol for responding to grizzly/human encounters, livestock depredations, damage to lawfully present property, and other grizzly/human conflicts within the Experimental Area. Any response protocol developed by the Committee will have to undergo public comment and be revised as appropriate based on comments received. Any conflicts or mortalities associated with these activities will result in review by the Committee to determine any recommendations that the Committee can make to help prevent future conflicts or mortalities. Policy changes on trail restrictions will be recommended by the Committee as necessary to appropriate wildlife and land management agencies.

(J) Revising mortality limits, population determinations, and other criteria for recovery as appropriate.

(K) Reviewing all human-caused mortalities during the first 5 years to determine whether new measures for avoiding future occurrences are required. If grizzly bear mortalities occur as a result of black bear hunting, the Committee will work with the Fish and Game Departments in both Idaho and Montana to develop solutions to minimize conflicts between grizzly bears and black bear hunting.

(L) Developing strategies to emphasize recovery inside the recovery area and to accommodate grizzly bears inside the Experimental Area. Grizzly bears may range outside the Recovery Area because grizzly bear habitat exists throughout the Experimental Area. Where conflicts are both significant and cannot be corrected as determined by the Committee, including conflicts associated with livestock, the Committee will develop strategies to discourage grizzly bear occupancy in portions of the Experimental Area. Unless the Committee determines otherwise, this rule provides that

private lands outside the national forest boundary in the Bitterroot Valley are an area where any human/grizzly conflicts would be considered significant. Grizzly bear occupancy will be discouraged in these areas and grizzly bears will be captured and returned to the Recovery Area.

(M) Establishing standards for determining whether or not the experimental reintroduction has been successful. It is recognized that absent extraordinary circumstances, these standards will reflect that the success or failure of the program cannot be measured in less than 10 years. General guidelines for such standards include one or more of the following conditions:

(1) If, within the number of years established by the Committee following initial reintroduction, no relocated grizzly bear remains within the Experimental Area and the reasons for emigration or mortality cannot be identified and/or remedied;

(2) If, within the number of years established by the Committee following initial reintroduction, no cubs of the year or yearlings exist and the relocated bears are not showing signs of successful reproduction as evidenced by no cubs of the year or yearlings.

(N) Develop procedures for the expeditious issuance of permits described in paragraph (k)(5)(iii) of this section.

(O) Develop 2-year work plans for submittal to the Secretary of the Interior pursuant to paragraph (k)(14) of this section.

(P) The Committee may recommend refined recovery goals for the Bitterroot Chapter of the Grizzly Bear Recovery Plan and a final recovery goal when sufficient information is available. Sufficient information is currently not available to develop a scientifically sound recovery goal. As this information becomes available, the Committee may recommend the recovery goal to the Secretary of the Interior and procedures for determining how this goal will be measured. The recovery goal for the Bitterroot grizzly bear population will be consistent with the habitat available within the Recovery Area and the best scientific and commercial data available. Any revised recovery goals developed by the Committee will require public review appropriate for the revision of a recovery plan. Bears outside the Recovery Area will contribute to meeting the recovery goal if there is reasonable certainty for their long-term occupancy in such habitats outside the Recovery Area.

(13) The Idaho Department of Fish and Game and the Montana Department

of Fish, Wildlife and Parks, in consultation with the U.S. Fish and Wildlife Service and Nez Perce Tribe, will exercise day-to-day management responsibility within the Experimental Area in accordance with this rule, the Bitterroot Chapter in the Grizzly Bear Recovery Plan and the policies and plans described in (k)(12) of this section.

(14) The Secretary of the Interior or his or her designee shall review 2-year work plans to be submitted by the Committee which outline the directions for the Bitterroot reintroduction effort. If the Secretary of the Interior determines, through his/her representative on the Committee that the decisions of the Committee, the management plans, or the implementation of those plans are not leading to the recovery of the grizzly bear within the Experimental Area, the Secretary of the Interior's representative on the Committee shall solicit from the Committee a determination whether the decision, the plan, or implementation of components of the plan are leading to recovery. Notwithstanding a determination by the Committee that a decision, plan, or implementation of a plan are leading to recovery of the grizzly bear within the Experimental Area, the Secretary of the Interior, who necessarily retains final responsibility and authority for implementation of the Endangered Species Act, may find that the decision, plan, or implementation of a plan are inadequate for recovery and may resume lead management responsibility. In the event that the Secretary of the Interior determines that

the actions of the Committee are not leading to recovery of the Bitterroot grizzly bear population, then the Secretary of the Interior shall resume lead management implementation responsibility for the Bitterroot experimental grizzly bear population. The Secretary of the Interior's decision shall be based on the best scientific and commercial data available. Prior to such resumption of lead management implementation responsibility, the Secretary of the Interior shall provide the Committee with recommended corrective actions and a 6-month time frame in which to accomplish those actions. Should the Secretary resume lead management responsibility, the Committee would be disbanded and all requirements identified in this rule regarding the Committee would be automatically nullified. If the Secretary does not resume lead management responsibility, the Committee shall continue until the recovery objectives have been met and the Secretary of the Interior has completed delisting.

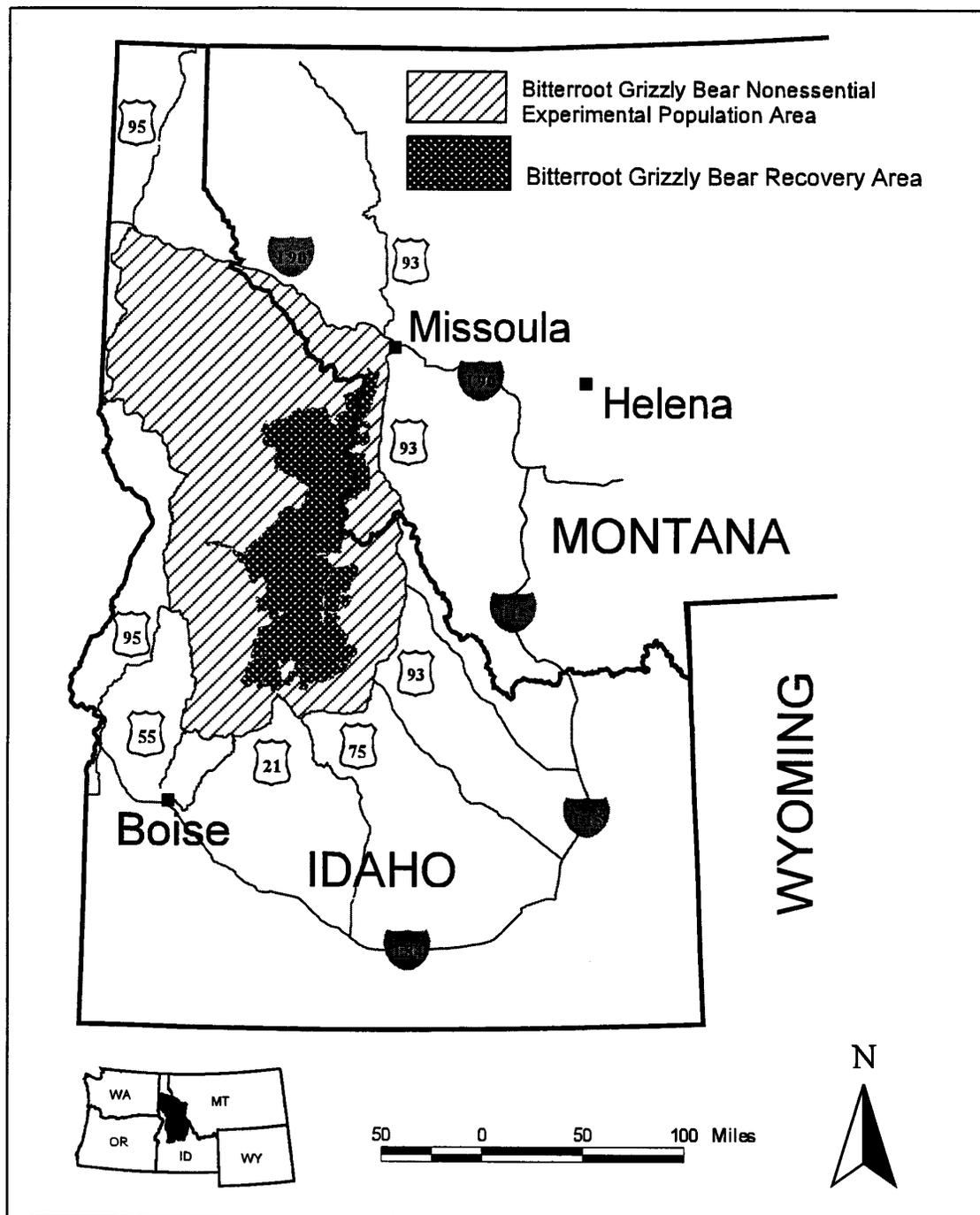
(15) The reintroduced population will be monitored closely for the duration of the recovery process, generally by use of radio telemetry as appropriate.

(16) The status of Bitterroot grizzly bear recovery will be reevaluated by the Committee and Secretary of the Interior at 5-year intervals. This review will take into account the reproductive success of the grizzly bears released, human-caused mortality, movement patterns of individual bears, food habits, and overall health of the population and will

recommend changes and improvements in the recovery program.

(17) *Determination of an Unsuccessful Reintroduction Under Nonessential Experimental Designation by the Secretary of the Interior.* If, based on any of the criteria established by the Committee, unless the Secretary of the Interior has resumed management under (k)(14) of this section, the Secretary of the Interior concludes, after consultation with the Committee, the States of Idaho and Montana, the Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks, and the Nez Perce Tribe, that the reintroduction has failed to produce a self-sustaining population, this rule will not be utilized as authority to reintroduce additional grizzly bears. Any remaining bears will retain their experimental status. Prior to declaring the experimental reintroduction a failure, a full evaluation will be conducted by the U.S. Fish and Wildlife Service into the probable causes of the failure. If the causes can be determined, and legal and reasonable remedial measures identified and implemented, consideration will be given to continuing the relocation effort and the relocated population. If such reasonable measures cannot be identified and implemented, the results of the evaluation will be published in the **Federal Register** with a proposed rulemaking to terminate the authority for additional experimental reintroductions.

BILLING CODE 4310-55-P



Dated: June 3, 1997.

William Leary,

*Acting Deputy Assistant Secretary, Fish,
Wildlife and Parks.*

[FR Doc. 97-17136 Filed 7-1-97; 8:45 am]

BILLING CODE 4310-55-C

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 970523122-7122-01; I.D. 041897B]

RIN 0648-AH52

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Amendment 9

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 9 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). Amendment 9 would require, with limited exceptions, the use of certified bycatch reduction devices (BRDs) in shrimp trawls in the exclusive economic zone (EEZ) in the Gulf of Mexico shoreward of the 100-fathom (fm) (183-m) depth contour west of 85°30' W. long.; set the bycatch reduction criterion for the certification of BRDs; and establish an FMP framework procedure for modifying the bycatch reduction criterion, for establishing and modifying the BRD testing protocol and its specifications, and for certifying and decertifying BRDs. The intended effects are to reduce the unwanted bycatch mortality of juvenile red snapper and, to the extent practicable, not adversely affect the shrimp fishery in the Gulf of Mexico.

DATES: Written comments must be received on or before August 18, 1997.

ADDRESSES: Comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Requests for copies of Amendment 9, which includes a regulatory impact review (RIR), an initial regulatory flexibility analysis (IRFA), a fishery impact statement, and a final supplemental environmental impact statement (final SEIS) should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619-2266; Phone: 813-228-2815; Fax: 813-225-7015.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-570-5305.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Gulf of Mexico

Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The shrimp fishery is the most valuable commercial fishery in the Gulf of Mexico. In 1995, roughly 5,000 large vessels and some 20,000 small boats harvested 219.8 million lb (99,700 mt) with an exvessel value of \$437.4 million. Shrimp species managed under the FMP are brown shrimp, pink shrimp, rock shrimp, royal red shrimp, seabob shrimp, and white shrimp. All except royal red shrimp are harvested in water depths less than 100 fm (183 m). Royal red shrimp are not found in depths less than 100 fm.

Shrimp trawls have a significant bycatch of non-target finfish and invertebrates, most of which are discarded dead. Scientific survey results indicate that the ratio of the weight of finfish bycatch to that of shrimp caught is about 4.2 to 1.

Bycatch may result in the reduction of species diversity within a marine ecosystem, adversely impact other fauna, and significantly reduce the yield in other fisheries that are directed at adults of the discarded species. Important fish species in the shrimp fishery bycatch include juveniles of red snapper, king and Spanish mackerel, and sharks. If left to mature and grow, these juvenile fish possibly could be harvested later and produce a significantly higher yield in weight as well as enhancing the reproductive capacity of their stocks.

Recent concerns over the shrimp fishery bycatch in the Gulf of Mexico have focused on the high mortality of juvenile (age 0 and age 1) red snapper, a valuable reef fish species for commercial and recreational fisheries. In 1991, NMFS began participation in a cooperative research program on the magnitude, composition, and impacts of the shrimp fishery bycatch in the Gulf of Mexico and South Atlantic and on technological approaches for reducing this bycatch. The shrimp and finfish industries, states, universities, and NMFS have been major partners in this cooperative research effort. To date, this research program has involved expenditures of more than \$10 million.

Based on research results, the Council developed Amendment 9 to reduce the unwanted bycatch of juvenile red snapper while, to the extent practicable, minimizing adverse effects on the shrimp fishery. The red snapper stock of the Gulf of Mexico is overfished. Even

if the directed fisheries for adult red snapper were eliminated, the bycatch of juvenile red snapper in shrimp trawls would still need to be reduced significantly for the adult spawning stock to recover. Under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico, the red snapper stock is subject to a long-term rebuilding program with the objective of reaching a 20 percent spawning potential ratio (SPR) by the year 2019, at which point the stock would no longer be considered overfished.

Management Measures in Amendment 9

The critical management measure would require installation of NMFS-certified BRDs in shrimp trawls towed in the Gulf of Mexico EEZ shoreward of the 100-fm (183-m) depth contour west of 85°30' W. long., the approximate longitude of Cape San Blas, FL. To be certified, these BRDs must reduce the bycatch mortality of juvenile red snapper by a minimum of 44 percent from the average level of mortality on these age groups during the years 1984-89. Specifically, on board a shrimp trawler, each trawl net that is rigged for fishing, and each try net that is rigged for fishing and has a headrope length greater than 16.0 ft (4.9 m), would be required to have a certified BRD installed. BRD designs that have passed the operational testing phase of the NMFS cooperative bycatch research program (i.e., the fisheye BRD and the Andrews turtle excluder device (TED)) would be certified for use in the EEZ where BRDs are required.

The fisheye BRD is a cone-shaped rigid frame constructed from aluminum or steel that is inserted into the top center of the codend to form an escape opening facing the mouth of the trawl.

The Andrews TED is an approved soft TED made of webbing that is designed to exclude marine turtles from shrimp trawls. This TED also meets the bycatch reduction criterion for juvenile red snapper and is considered as a potentially certifiable BRD upon implementation of Amendment 9, if not prohibited from use as a TED by other applicable Federal law or regulation. On December 19, 1996, NMFS issued a final rule (61 FR 66933) under the Endangered Species Act (ESA) that decertified the Andrews TED effective March 1, 1997, in the specified conservation area (i.e., 0-10 nautical miles offshore west of the Mississippi River) and, effective December 19, 1997, throughout the Gulf. New tests indicated that this TED does not meet the requirements for excluding turtles. That final rule would remove the

Andrews TED from the list of NMFS-approved TEDs unless improvements or modifications are made to the design, so that it will exclude turtles effectively. Thus, the Andrews TED would be a certified BRD upon implementation of Amendment 9 only during a time when, and in a geographical area where, it is an approved TED, as specified in the applicable ESA regulations (i.e., at 50 CFR 227.72(e)(4)(iii)).

Amendment 9 would exclude from the requirement for use of BRDs: (1) Vessels trawling for royal red shrimp beyond the 100-fm (183-m) depth contour or trawling for butterfish or groundfish; (2) a single try net with a headrope of 16 ft (4.9 m) or less on each vessel; and (3) vessels trawling for shrimp with no more than two rigid-frame roller trawls limited to 16 ft (4.9 m) or less, such as those used in the Big Bend area of Florida. The rationale for excluding vessels fishing for royal red shrimp is that red snapper rarely occur in areas where royal red shrimp are caught. Vessels trawling for butterfish would be excluded because, based on observer information, such vessels have a minimal bycatch of red snapper and only two or three vessels are in the fishery. Vessels trawling for groundfish would be excluded because these vessels have a minimal bycatch of red snapper compared to shrimp trawlers. In the butterfish and groundfish fisheries, the mesh sizes and deployments of trawls make it highly unlikely that a vessel would have on-board or landed catch of shrimp in excess of 1 percent, by weight. Therefore, the codified text of this proposed rule contains no explicit exemption from the requirement for the use of a BRD by a vessel trawling for butterfish or groundfish—such vessel, by definition, would not be a “shrimp trawler” required to have a BRD in each net. Vessels trawling for shrimp with rigid-frame roller trawls would be excluded because such vessels operate in shallow waters where red snapper are not found in significant numbers.

Framework Measures in Amendment 9

The purpose of the framework measures is to provide a flexible management system to minimize regulatory delays while maintaining substantial Council and public input into management decisions. With these procedures in place, management can rapidly adapt to changes in the abundance of red snapper, new scientific information, and changes in fishing practices, such as seasonal variations in fishing patterns, areas, and effort. In addition, BRD certification/decertification via the framework

procedure may be expedited to react to changes in the certification criterion and to the testing of new or modified BRDs.

If Amendment 9 is approved, the following procedures would be followed under the framework measures that are contained in Amendment 9 but are not part of the proposed rule.

Modification of the Bycatch Reduction Criterion

The Council would evaluate the need for changes to the bycatch reduction criterion for red snapper and recommend needed changes to the Regional Administrator, Southeast Regional Office, NMFS (Regional Administrator). Such changes would be accomplished through regulatory amendments (which would modify the final rule implementing Amendment 9 through notice-and-comment rulemaking). If the Council determines that bycatch reduction criteria are needed for other finfish species, those criteria would be established by FMP amendments.

The Council would establish a Special BRD Advisory Panel (SBAP) made up of scientists, engineers, fishermen, environmentalists, and others with knowledge of BRDs and their ability to reduce bycatch of juvenile red snapper. The SBAP would advise the Council on the need for, and recommendations regarding, modifications to the bycatch reduction criterion for red snapper. Prior to recommending such changes, the Council would also consult its shrimp and reef fish committees, as appropriate.

In addressing changes to bycatch reduction criterion for juvenile red snapper, the Council would consider the status of red snapper stocks as reflected in stock assessments, the impacts of shrimp trawl bycatch, and the impacts of the directed fishery for red snapper on the stock. The Council would also consider factors related to the shrimp fishery such as changes in fishing effort, the effects of state and Federal management efforts on bycatch, changes in TED gear or rules that may affect bycatch, closed areas, closed seasons and/or seasonal usage of BRDs, and limitations on the types and sizes of trawl gear. The Council would consider environmental and ecological effects, social and economic factors in the commercial and recreational fisheries for both red snapper and shrimp, and other relevant data. Modifications to the bycatch reduction criterion would be based on the best available scientific information and must be achievable through available, or soon to be available, technology. Public comments would be received prior to

changes, and public testimony would be obtained at the meeting at which the Council considers changing the criteria.

The bycatch reduction criterion would be specified in terms of a percentage reduction in bycatch mortality of juvenile red snapper (age 0 and age 1) from the average level of mortality on those age groups during the years 1984–89. The criterion may be further qualified according to seasons and geographic areas.

If changes are needed to the bycatch reduction criterion for juvenile red snapper, the Council would send a regulatory amendment to the Regional Administrator that details its recommendations along with any relevant reports and public comments. The Regional Administrator would review the Council's recommendations, all scientific reports, and comments of the SBAP and other Council committees. If it is determined that the recommendations are consistent with the objectives of the FMP, the provisions of the Magnuson-Stevens Act, and other applicable law, the Regional Administrator would draft proposed regulations implementing the changes to the bycatch reduction criterion for publication in the **Federal Register**. A comment period of not less than 15 days would be provided on the proposed rule.

If the Regional Administrator rejects the recommended changes of the Council, the Regional Administrator would notify the Council and provide written reasons for rejection along with recommendations for revisions. In the event of rejection, the existing criterion for bycatch reduction of red snapper would remain in effect until changes are approved and implemented.

Establishment and Modification of BRD Certification/Decertification Criteria and the BRD Testing Protocol

The criterion for the certification of a BRD would be that the BRD can consistently meet or exceed the established bycatch reduction criterion through the testing protocol established by the Regional Administrator. This BRD certification criterion may be modified through implementation of a regulatory amendment concurrent and consistent with changes to the bycatch reduction criterion.

The Council has not established criteria for shrimp loss from BRDs; however, shrimp loss data should accompany any application for certification of a BRD to allow evaluation of shrimp loss while satisfying bycatch reduction requirements. In addition, the applicant should provide information on cost and

operational considerations (e.g., ease of handling and any special operating tactics such as hauling back while towing away from high seas to minimize shrimp loss).

The BRD testing protocol would include the testing parameters and statistical guidelines to be followed in evaluating the effectiveness of BRD designs in meeting the established bycatch reduction criterion. The basic testing procedure would include an accurate and detailed written description and diagram of the gear used, including the types and rigging of trawls, BRDs, and TEDs. Also, the BRD must be rotated between outside and inside nets from side to side to reduce net bias. Modification of gear during testing constitutes the beginning of a new test.

All testing would be done under the supervision of qualified scientists or other technical personnel approved by the Regional Administrator to ensure that the protocol is followed and to help prevent the need for additional evaluation. Testing would be accomplished by comparison of a net with an experimental BRD and approved TED to a net with only the same type of TED. Testing will involve at least the minimum number of tows specified by the protocol. Testing would be done in areas where juvenile red snapper are present.

The Regional Administrator would develop the testing protocol for certifying new BRDs. This testing protocol would include specifications and guidelines regarding various testing parameters. Prior to implementation of the testing protocol, the Regional Administrator would provide copies of the protocol to the Council and provide a reasonable period for the Council's review and comment. In reviewing the testing protocol, the Council may consult appropriate committees and advisory panels for recommendations. The Council would advise the RA in writing of any recommendations regarding the testing protocol, including its guidelines and parameters, and provide any relevant reports and comments. The RA would review the Council's recommendations along with other comments and reports. The BRD testing protocol would be published in the **Federal Register**.

The following are testing parameters and guidelines that would be included in the testing protocol. There may be other parameters that would be required to be examined in evaluating BRD performance. The RA would determine if the researcher has complied with these testing parameters as specified in the protocol including: Valuation and

oversight personnel, sample size, experimental design, season and area of testing, time of day, required measurements, length of tows, descriptions of devices in nets, shrimp loss, and any other relevant parameters.

For each new BRD proposed for certification, the applicant would be required to submit an application to the Regional Administrator along with a complete report on the BRD testing. This report would be required to contain a comprehensive description of the tests, including a summary of all data collected together with copies or listings of all data collected during the certification trials, and analyses of the data that demonstrate compliance with the testing protocol and the ability of the BRD to meet or exceed the bycatch reduction criterion. An applicant would be required to provide photographs, drawings, and similar material describing the BRDs. In addition, any unique or special circumstances of the tests should be described.

The Regional Administrator would determine if a BRD meets or exceeds the bycatch reduction criterion and whether the required reports and supporting materials are complete. The Regional Administrator would also determine whether the testing protocol was followed. If the applicant complies with the testing protocol and the BRD meets or exceeds the current bycatch reduction criterion, the Regional Administrator would certify the BRD (with any appropriate conditions as indicated by test results) and announce the certification in the **Federal Register**, amending the list of certified BRDs.

The Regional Administrator would advise the applicant, in writing, if a BRD is not certified. This notification would explain why the BRD was not certified and what the applicant may do to modify the BRD or the testing procedures to improve the chances of having the BRD certified in the future. If certification were denied because of insufficient information, the applicant would have 60 days from receipt of such notification to provide the additional information; afterwards, the applicant would have to re-apply. If the Regional Administrator subsequently certifies the BRD, the Regional Administrator would announce the certification in the **Federal Register**, amending the list of certified BRDs.

The Regional Administrator would decertify a BRD whenever it is determined that the BRD does not satisfy the bycatch reduction criterion. Before any proposed action would be taken to decertify a BRD, the Council and public would be advised and provided an opportunity to comment on

the advisability of the proposed decertification. The Regional Administrator would consider any comments from the Council, and if the Regional Administrator elects to decertify the BRD, it would be accomplished through publication of proposed and final rules in the **Federal Register** with a comment period of not less than 15 days.

The Regional Administrator would, if necessary, modify the BRD testing protocol to more appropriately evaluate BRDs to determine if they meet the bycatch reduction criterion as established or modified by the Council. If the Regional Administrator determines that changes to the testing protocol are needed, the Regional Administrator would follow the same basic process as for initial implementation (i.e., consultation with the Council and regulatory amendment).

One-Year Delayed Effectiveness Period

In a letter dated March 26, 1997, based on the Council's motions passed at its meeting of March 10-13, 1997, the Council Chairman requested NMFS to:

1) Implement Amendment 9 to the Shrimp Fishery Management Plan with an effective date of one year from its approval date (approximately August 1, 1998).

2) Develop and implement a transition plan including, but not limited to the following elements:

A. Outreach to encourage the industry to experiment with existing and new BRDs to develop as many acceptable models as possible, and any BRD other than a hard TED will be acceptable during the transition period;

B. Technology transfer to provide training and assistance to the industry in the use of BRDs; and

C. Educational assistance to provide the industry with knowledge to obtain the maximum benefit of newly developed devices.

3) Freeze the existing total allowable catch (TAC) for red snapper until the effective implementation date of Amendment 9.

In a letter dated April 8, 1997, to the Council, the Regional Administrator advised that NMFS could not grant its request for delayed implementation of Amendment 9 because the Magnuson-Stevens Act requires NMFS to implement approved fishery management plans and amendments without delay, and that a 1-year delay in implementation would be inconsistent with the administrative record supporting Amendment 9. In a letter dated April 10, 1997, to the Regional Administrator, the Council Chairman indicated: "In regard to your letter of April 8 regarding Shrimp Amendment 9, I do not think it was ever the Council's intent that the secretarial

review process for approval and implementation be halted or slowed." He further indicated: "My reading of the Council intent was as soon as the rules were approved that the requirement for bycatch reduction devices (BRDs) be modified to allow the use of noncertified BRDs as well as certified BRDs for a one-year period. This would allow testing by the industry of other BRD designs, hopefully resulting in designs that could be certified during that period. Also during that period we had hoped that National Marine Fisheries Service and National Oceanic and Atmospheric Administration personnel (including Sea Grant) would provide assistance to the industry in evaluating and 'tuning' that gear."

NMFS has initiated Secretarial review of Amendment 9 and has announced the availability of Amendment 9 for public review and comment. NMFS is proceeding with publication of this proposed rule for public comment. As indicated above, Amendment 9 measures approved by NMFS must be implemented without delay. If approved, the measure requiring all affected shrimp fishermen to use NMFS-certified BRDs would become effective in accordance with the Administrative Procedure Act. Amendment 9 does not provide for the use of non-certified BRDs. If the Council wants to allow the use of non-certified BRDs for whatever period, it would have to amend the FMP and submit such amendment to NMFS for review, approval, and implementation.

Availability of and Comments on Amendment 9

Additional background and rationale for the measures discussed above are contained in Amendment 9, the availability of which was announced in the **Federal Register** on April 29, 1997 (62 FR 23211). Written comments on Amendment 9 must be received by June 30, 1997. Comments that are received by NMFS by June 30, 1997, whether specifically directed to Amendment 9 or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve Amendment 9. Comments received after that date will not be considered by NMFS in this decision. All comments received on Amendment 9 or on this proposed rule during their respective comment periods will be addressed in the final rule.

Classification

At this time, NMFS has not made a final determination that the provisions of Amendment 9 are consistent with the national standards, other provisions of

the Magnuson-Stevens Act, and other applicable laws. In making that final determination, NMFS will take into account the data, views, and comments received during the comment period.

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

The Council prepared a final SEIS for Amendment 9 that was filed with the Environmental Protection Agency (EPA) for public review and comment; a notice of its availability was published by the EPA in the **Federal Register** (June 6, 1997, 62 FR 31098). The public comment period will end July 7, 1997. The final SEIS assesses the impacts on the human environment of both the Gulf shrimp fishery and the Council's proposed and alternative management measures for reducing shrimp fishery bycatch.

According to the final SEIS, the bycatch reduction measures of Amendment 9 (i.e., the installation of certified BRDs in shrimp trawls): (1) Would reduce the bycatch mortality of juvenile red snapper by 44 percent, an amount necessary for rebuilding the red snapper stock to a healthy level by 2019; (2) would reduce red snapper bycatch in geographic areas where red snapper are concentrated; (3) would reduce the bycatch of other finfish in the area where BRDs are required (i.e., in the Gulf EEZ within the 100-fathom (183-m) contour west of Cape San Blas, FL); no finfish bycatch reduction is expected for most of Florida's west coast; (4) may result in a loss of shrimp harvested; the amount of this loss will depend on the type of BRD used and the operation of the trawl and vessel; (5) would still result in some reduced level of incidental take of finfish in shrimp trawls because BRDs are not 100 percent effective; and (6) would not affect shrimp fishery incidental catch in state controlled waters unless the states adopt similar BRD regulations or unless some level of voluntary use of BRDs would occur in these areas.

The best available stock assessment model indicates that the red snapper stock will rebound with a substantial reduction in the bycatch mortality of the juveniles, but the ecological consequences of reducing the bycatch mortality of other fishes and invertebrates, particularly those that have little commercial value due to size or marketability, are not fully understood. Based on the results of ecological modeling, the mandated use of BRDs could have a negative effect on the biomass of shrimp stocks (i.e., between a 5.9 and 8.2 percent reduction in shrimp biomass resulting primarily from increased populations of bottom

fish predators); three of four models considered showed shrimp biomass reductions resulting from increased finfish predation—one model indicated the potential for a small increase in shrimp biomass. Shrimp fishermen will be adversely affected to the extent that their catch is reduced through the loss of shrimp from BRDs as well as any resultant loss of catch from potential reductions in the total shrimp biomass.

Conversely, both recreational and commercial red snapper fishermen should benefit from the predicted recovery of the red snapper stock. Fishermen who target other highly sought-after species that are also taken in the shrimp fishery bycatch (e.g., king and Spanish mackerel) also should benefit to the extent that populations of these species increase. The effects of the shrimp fishery on the red snapper stock have heretofore been adverse because of the bycatch mortality of juveniles; the effects of this fishery on other finfish populations have probably been adverse but the exact biological impacts are unknown or not well understood.

The overall effects of the proposed BRD measures will be positive for the red snapper stock and probably positive for the other finfish stocks affected by shrimp fishery bycatch (the probable effects on these other species is not well understood). Although the overall effects of the bycatch reduction measures may be positive for finfish, they may have negative effects in terms of a reduced biomass of shrimp because of increased finfish predation and reduced nutrient recycling. Whether this will result in a corresponding reduction in shrimp harvest is unknown at this time. Firm conclusions about impacts of BRDs on shrimp catches are difficult given an approximate 12 percent variability in annual Gulf shrimp landings over the last five years. Because of these uncertainties, it is difficult to predict the effects of BRDs on shrimp fishery participants or fishing communities resulting from changes in the biomass of shrimp stocks or the level of shrimp landings.

The Council prepared an initial regulatory flexibility analysis (IRFA) based on the RIR that describes the impacts this proposed rule, if adopted, would have on small entities. Based on the IRFA, NMFS has concluded that Amendment 9, if approved and implemented through final regulations, would have significant economic impacts on a substantial number of small entities. A summary of the IRFA's assessment of the significant impacts on small entities follows.

Amendment 9 will affect most of the roughly 5,000 shrimp vessels that

operate in the Gulf, because the vast majority of such vessels operate in the EEZ for at least part of the year. It will also affect a substantial, but unknown, number of shrimp boats that are smaller than the typical offshore shrimp vessel (smaller craft that do not require U.S. Coast Guard documentation) but operate in the EEZ during periods of favorable weather when harvestable shrimp populations are found in the near-shore portion of the EEZ. All of the vessels and boats that would be affected by Amendment 9 are considered small business entities for the purposes of the Regulatory Flexibility Act, because their individual annual gross revenues are less than \$3 million. The small entities that would be affected by Amendment 9 generate annual gross revenues ranging from almost nil to about \$200,000, while incurring annual operating costs ranging from \$8,000 to \$98,000.

The shrimp loss from using BRDs would cause at least a 5-percent reduction in gross revenues for a large, but unknown, number of shrimp vessels. The owners of affected shrimp fishing vessels and boats will have to purchase and use certified BRDs, each costing between \$50 and \$200; vessels and boats may fish with between one and five nets. In addition, affected small entities would incur annual increases in operating costs ranging from 0.2 to 10 percent; these costs generally would be less than 5 percent. The IRFA indicates that, depending on the type of certified BRD shrimpers choose, between 10 and 513 full-time shrimp vessels (i.e., between 0.3 and 16.6 percent of the fleet size of these vessels) would leave the shrimp fishery because of the effects of the BRD requirements.

The subject proposed rule to implement Amendment 9 would not establish any new reporting or recordkeeping requirements. However, the BRD testing protocol required by Amendment 9 will be published under a separate and subsequent proposed rule and will include two new collection-of-information requirements subject to the Paperwork Reduction Act (see discussion below regarding Paperwork Reduction Act). The impacts of these information collections on small entities will be discussed in the subsequent rulemaking.

Regarding other Federal rules that duplicate, overlap, or conflict with the proposed rule, if Amendment 9 is approved and implemented, the Andrews TED would be a NMFS-certified BRD only for that period of time and for that geographic area for which it will still be a NMFS-certified TED (see discussion above regarding the

Andrews TED in relation to Amendment 9 and the ESA). After that period of time or outside of that area, the Andrews TED would not be a NMFS-certified BRD.

Several alternatives to the proposed measures of Amendment 9 were considered by the Council. The status quo, which would have no negative economic effects on the shrimp trawling industry, was rejected because the critical bycatch reduction objective cannot be met without some action to reduce the shrimp fishery bycatch of red snapper. The alternative of closing the shrimp season for a portion of the year was rejected because this would not likely result in a large enough reduction of red snapper bycatch and because the negative impacts on the shrimp industry would be significant. The alternative of meeting the bycatch reduction objective through permanently closing some shrimp trawling areas where juvenile red snapper are concentrated was rejected because the projected economic losses to the shrimp industry were greater than the preferred alternative. The proposed rule does provide for certain exemptions from the BRD requirements (e.g., exemptions for gear and fishing operations in certain depth and geographic zones where juvenile red snapper are not abundant) to reduce negative economic impacts on shrimp fishermen while still meeting the bycatch reduction objectives. A copy of the IRFA is available from the Council (see ADDRESSES).

This rule would not establish any new reporting or recordkeeping requirements. As discussed above, the BRD testing protocol is expected to include two new collection-of-information requirements subject to the Paperwork Reduction Act. These two requirements are the notification of NMFS prior to conducting BRD certification tests and the submission of test results with the application for certification. The estimated burden hours (i.e., response times for these requirements) for these requirements have not been determined. When determined, these new collection-of-information requirements will be submitted to the Office of Management and Budget for approval. These requirements and their response times/burden hours will be part of another proposed rule containing the BRD testing protocol to be published by NMFS subsequently in the **Federal Register** with an opportunity for public comment.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, National Oceanic and Atmospheric Administration,

Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 25, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.2, a definition for "Shrimp trawler" is added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Shrimp trawler means any vessel that is equipped with one or more trawl nets whose on-board or landed catch of shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

* * * * *

3. In § 622.41, paragraph (h) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(h) *Shrimp in the Gulf*—(1) *BRD requirement.* (i) Except as exempted in paragraphs (h)(1)(ii) through (iv) of this section, on a shrimp trawler in the Gulf EEZ shoreward of the 100-fathom (183-m) depth contour west of 85°30' W. long., each net that is rigged for fishing must have a certified BRD installed. A trawl net is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to a sled, door, or other device that spreads the net, or to a tow rope, cable, pole, or extension, either on board or attached to a shrimp trawler.

(ii) A shrimp trawler is exempt from the requirement to have a certified BRD installed in each net provided that at least 90 percent (by weight) of all shrimp on board or offloaded from such trawler is royal red shrimp.

(iii) A single try net with a headrope length of 16 ft (4.9 m) or less used by a shrimp trawler is exempt from the requirement to have a BRD installed provided it is either pulled immediately in front of another net or is not connected to another net.

(iv) Up to two rigid-frame roller trawls that are 16 ft (4.9 m) or less in length used or possessed on board a shrimp trawler are exempt from the requirement

to have a certified BRD installed. A rigid-frame roller trawl is a trawl that has a mouth formed by a rigid frame and a grid of rigid vertical bars; has rollers on the lower horizontal part of the frame to allow the trawl to roll over the bottom and any obstruction while being towed; and has no doors, boards, or similar devices attached to keep the mouth of the trawl open.

(2) *Certified BRDs*. The following BRDs are certified for use by shrimp trawlers in the Gulf EEZ. Specifications

of these certified BRDs are contained in Appendix D of this part.

(i) Fisheye.

(ii) Andrews TED. The Andrews TED is certified as a BRD only during a time when and in a geographical area where it is an approved TED, as specified at 50 CFR 227.72(e)(4)(iii).

4. In § 622.48, paragraph (i) is added to read as follows:

§ 622.48 Adjustment of management measures.

* * * * *

(i) *Gulf shrimp*. Bycatch reduction criteria, BRD testing protocol, certified BRDs, and BRD specifications.

5. In Appendix D, paragraph D is added to read as follows:

Appendix D to Part 622—Specifications for Certified BRDs

* * * * *

D. *Andrews TED*. Specifications for the Andrews TED are at 50 CFR 227.72(e)(4)(iii)(C).

[FR Doc. 97-17229 Filed 7-1-97; 8:45 am]

BILLING CODE 3510-22-F

Notices

Federal Register

Vol. 62, No. 127

Wednesday, July 2, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Availability for Licensing and Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of Availability and Intent.

SUMMARY: Notice is hereby given that U.S. Patent Application Serial No. 08/797,226, "DNA Sequence Encoding Solanidine UDP-Glucose Glucosyltransferase and Use to Reduce Glycoalkaloids in Solanaceous Plants," filed February 7, 1997, is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant an exclusive license to Small Potatoes, Inc., of Madison, Wisconsin.

DATES: Comments must be received on or before September 30, 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 Small Potatoes, Inc., has submitted a complete and sufficient application for a license. The prospective exclusive 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 exclusive license may be granted unless, within ninety 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. 97-17268 Filed 7-1-97; 8:45 am]

BILLING CODE 3410-03 P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97-048-1]

National Animal Damage Control Advisory Committee; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the National Animal Damage Control Advisory Committee.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held at the USDA Center at Riverside in the Conference Center, 4700 River Road, Riverdale, MD 20737. The Committee will meet on July 30-31, 1997, from 8 a.m. to 5 p.m., and August 1, 1997, from 8 a.m. to noon.

FOR FURTHER INFORMATION CONTACT: Mr. William Clay, Associate Deputy Administrator, ADC, APHIS, Mail Stop 3402, Washington, DC 20250-3402, (202) 720-2054.

SUPPLEMENTARY INFORMATION: The National Animal Damage Control Advisory Committee (Committee) advises the Secretary of Agriculture concerning policies, program issues, and research needed to conduct the Animal Damage Control (ADC) program. The Committee also serves as a public forum enabling those affected by the ADC program to have a voice in the program's policies.

The meeting will focus on research and research priorities and will be open to the public. However, due to time constraints, the public will not be allowed to participate in the Committee's discussions. Written statements concerning meeting topics may be filed with the Committee before or after the meeting by sending them to Mr. William Clay at the address listed under **FOR FURTHER INFORMATION CONTACT**, or may be filed at the meeting.

Please refer to Docket No. 97-048-1 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act (Pub. L. 92-463).

Done in Washington, DC, this 26th day of June 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97-17356 Filed 7-1-97; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Forest Service

St. Joe Weed Control Project; Idaho Panhandle National Forests, Benewah, Shoshone and Latah Counties, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the potential environmental effects of using herbicides to treat noxious weeds on the St. Joe Ranger District. Treatment sites would be located at various locations across the district and are within the St. Maries River, St. Joe River, and North Fork of the Clearwater River Ecosystems, St. Joe Ranger District, Idaho Panhandle National Forests, Benewah, Shoshone and Latah Counties, Idaho. Most treatment sites are located near or along forest roads, trails or developed recreation sites.

The proposed action is designed to treat existing populations of weeds to promote native and/or desirable plants within these ecosystems, treat existing populations of weeds to reduce weed seed sources, eradicate weeds found in identified weed-free zones, comply with laws regarding management of noxious weeds, and cooperate with other agencies and private individuals concerned with the management of weeds. The proposed action would include the use of herbicides as part of an integrated pest management approach to control weeds. An integrated approach includes mechanical, biological, cultural and chemical methods.

The weed species considered for control include spotted knapweed

(*Centaurea maculosa*), diffuse knapweed (*Centaurea diffusa*), orange hawkweed (*Hieracium aurantiacum*), meadow hawkweed (*Hieracium pratense*), purple loosestrife (*Lythrum salicaria*), dalmation toadflax (*Linaria dalmatica*) sulfur cinquefoil (*Potentilla recta* L.), yellow starthistle (*Centaurea solstitialis*), hound's-tongue (*Cynoglossum officinale*) and common tansy (*Tanacetum vulgare*).

This project level EIS will tier to the Idaho Panhandle National Forests Weed Pest Management EIS, 10/89; the Idaho Panhandle National Forests Land and Resource Management Plan (Forest Plan), 9/87; the Final EIS Noxious Weed Management Projects, Bonner's Ferry Ranger District, 9/95; and the Priest Lake Noxious Weed Control Project Final EIS, 2/97.

DATES: Written comments and suggestions should be received on or before August 1, 1997.

ADDRESSES: Submit written comments and suggestions on the proposed management activities or request to be placed on project mailing list to Bradley J. Gilbert, District Ranger, St. Joe Ranger District, P.O. Box 407, St. Maries, ID, 83861.

FOR FURTHER INFORMATION CONTACT: Lynette Myhre, EIS Team Leader, St. Joe Ranger District, phone number 208-245-4517.

SUPPLEMENTARY INFORMATION: Weed control is proposed on 131 sites that have been identified on the St. Joe Ranger District. These sites range in size from approximately 0.10 acre to 35 acres and total approximately 3,360 gross acres. These sites represent less than 0.47% of the 720,000 acres of National Forest System Lands on the St. Joe Ranger District.

There are a variety of purposes for treating existing populations of weeds on the St. Joe Ranger District. The primary purposes are: (1) Eradicate weeds found in weed free zones; (2) reduce weed seed sources along main travel routes; (3) to promote native and desirable plants; (4) comply with Federal and State Laws regulation management of noxious weeds; and (5) cooperate with other agencies and private individuals concerned with the management of weeds.

The treatment sites are located across the district. The greatest number of sites are located in the St. Joe Ecosystem. Other sites are located in the St. Maries River and the North Fork of the Clearwater River Ecosystems. The Idaho Panhandle National Forest Land and Resource Management Plan provides guidance for management activities within the potentially affected area

through its goals, objectives, standards and guidelines, and management area direction. The Forest Plan directed that forest pests by managed by an integrated pest management approach.

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative, in which current management practices would continue. Additional alternatives will represent the range of control methods currently available for treatment of weeds, including non-chemical methods.

Public participation is an important part of the analysis and will play an important role in developing the alternatives. The initial scoping process (40 CFR 1501.7) will occur during June and July, 1997. A previous EIS was completed for this project. That EIS was appealed and remanded back to the St. Joe District to be redone. The public input from that analysis will be used for this analysis in addition to response to this NOI and to the Idaho Panhandle National Forest Quarterly Schedule of Proposed Actions, July, 1997. In addition, the public is encouraged to visit with Forest Service officials during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organization who may be interested in or affected by the proposed actions. Public meetings may be held, but have not been scheduled at this time.

Comments from the public and other agencies will be used in preparation of the Draft EIS. The Scoping process will be used to:

1. Identify potential issues.
2. Identify major issues to be analyzed in depth.
3. Eliminate minor issues or those which have been covered by a relevant previous environmental analysis.
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and alternatives (i.e., cumulative effects).

Some public concerns have already been identified from initial interdisciplinary review of the weed control proposal. The following major issues have been identified so far:

1. Current and potential impacts of noxious weeds on ecosystem communities and processes; threatened, endangered, and sensitive plants and animals; soils; water quality; aesthetics; wildlife and fish; and recreational opportunities.
2. Potential impacts of weed control.

3. Potential effects upon human health from the application of herbicides.

This list will be verified, expanded, or modified based on public scoping and interdisciplinary review of this proposal.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency, (EPA) and available for public review in August, 1997. At that time, the EPA will publish a Notice of Availability of the draft environmental impact statement in the **Federal Register**. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of 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 reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental statement stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day scoping comment period so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the

National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement. My address is St. Joe Ranger District, P.O. Box 407, St. Maries, ID, 83861.

Dated: June 23, 1997.

Bradley J. Gilbert,

District Ranger, St. Joe District, IPNF.

[FR Doc. 97-17250 Filed 7-1-97; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Record of Decision for Revision of Black Hills National Forest Land and Resource Management Plan (Forest Plan); Black Hills National Forest; Custer, Fall River, Meade, Lawrence, Pennington Counties, SD; Crook and Weston Counties, WY

AGENCY: Forest Service, USDA.

ACTION: Notice of decision.

SUMMARY: On June 24, 1997, Elizabeth Estill, Regional Forester, Rocky Mountain Region, signed a Record of Decision (ROD) for the Revised Forest Land and Resource Management Plan for the Black Hills National Forest. This decision rescinds the March 13, 1997 decision revising the Plan because of a problem with an incomplete record. After receiving the full record, and after further consideration, the earlier decision is reissued unchanged. While the new decision makes no substantive change to the prior decision, it does have consequences. The new decision restarts the administrative appeal clock and also the effective date of the Revised Forest Plan.

EFFECTIVE DATE: This decision is effective August 1, 1997 (NFMA, 16 USC 1604(J)). A legal notice is also being published in the Denver Post, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: John Rupe, Forest Planning Team Leader, 605-673-2251.

SUPPLEMENTARY INFORMATION: On May 28, interested organizations which participated in the public scoping process for the Revision, issued a request to the Chief of the Forest Service to vacate the March 13 Record of Decision (ROD), based, in part, on issues connected to the availability and finalization of the analysis of the public comment record prior to issuance of the decision.

The March 13 ROD discussing public involvement stated: "Individual responses to each comment have been

prepared and are available upon request." When commentors sought copies of these individual responses, the Forest staff discovered that computer software malfunctions had occurred leaving the database incomplete. Upon further investigation, it was discovered that some of the promised individual responses had not even been prepared when the earlier ROD was signed. Upon discovery of the situation, the Regional Forester directed the Forest Supervisor to complete the record and resubmit it for review. The Forest Supervisor submitted the complete record for the Regional Forester's review on June 13.

The following explains the public involvement process to put this decision in context. The Forest Service received approximately 5,400 comments on the Draft Revised Plan and Draft Environmental Impact Statement (DEIS). The comments were reviewed individually and individual responses were to be prepared for the record. However, the Forest Supervisor chose not to include the individual responses to each comment in the Final Environmental Impact Statement (FEIS). For public disclosure with the FEIS, comments were grouped into subject matter areas along with Forest Service responses to the broader concerns which were expressed.

This evaluation of the public comment was included in Appendix A to the FEIS. This Appendix explained how public comments were evaluated and responses were prepared in accordance to 40 CFR 1503.4(a). The only type of comment which was not fully addressed prior to the March 13 decision was the type that the Forest Service concluded "do not warrant further agency response" under the regulations. The regulations do require that the agency explain why it has concluded that the comments don't warrant further agency response. This step had not been completed for all comments when the earlier ROD was signed. This final step has now been completed.

As a result of an additional interdisciplinary team review, the Forest Supervisor concluded that all comments in the database were addressed in the FEIS or ROD, and recommended to the Regional Forester that individual responses to public comment should not affect the disposition of the March 13 decision.

After reviewing the record, the Regional Forester has concurred with the findings of the Forest Supervisor. Moreover, the Regional Forester has determined that the findings of the review reaffirm the March 13 decision in its entirety.

Following are the specific features of the decision:

- It incorporates the March 13 decision in its entirety, including all rationale, elements, findings and implementation schedules.
- To date, the Forest Supervisor has implemented the revised Forest Plan through the issuance of nine project decisions. All decisions are currently in respective appeal periods and subject to administrative appeal under 36 CFR 217.10(c). None of these actions would be implemented before the effective implementation date of this decision. Moreover, the decision results in no changes or alternations in the Revised Plan or supporting FEIS. Therefore, the Regional Forester has determined that no adjustments or stays of these nine project level analyses or decisions will occur as a part of this action.
- There are an additional six projects with decisions pending. These or any other new decisions issued under the Revised Plan will not be implemented until thirty days from this notice.

The effective implementation date for this decision will occur 30 days from this notice. A legal notice is also being published in the Denver Post, Denver, Colorado.

This decision is subject to administrative review pursuant to 36 CFR 217. Any appeal of this decision must be fully consistent with 36 CFR 217.9 and be filed in duplicate with the Chief, USDA—Forest Service, P.O. Box 96090, NFS, 3NW, Appeals Office, Washington, DC 29909-6090. The appeal must be filed within 90 days from the date this decision is published in the Denver Post. Anyone concerned about the decision is urged to contact the Forest Supervisor before submitting an appeal. It may be possible to resolve the concern in a less formal way.

Dated: June 26, 1997.

Joe L. Meade,

Acting Deputy Regional Forester.

[FR Doc. 97-17276 Filed 7-1-97; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Availability of Funding and Requests for Proposals for the Section 538 Rural Rental Housing Guaranteed Loan Demonstration Program

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) announces the availability of the

Section 538 Rural Rental Housing Guaranteed Loan program on a demonstration basis. The intended outcome is to produce new affordable rental housing by inviting qualified lenders and eligible housing providers to propose rental complexes that will serve rural residents with low and moderate incomes. The 1996 demonstration resulted in the selection of 9 proposals providing 370 affordable units in 8 States. The purpose of this year's demonstration is to test program enhancements we are considering for incorporating into final program regulations.

DATES: The deadline for receipt of applications is 4 p.m., Eastern Daylight Savings Time on August 18, 1997. Applications received after such date and time will be returned. Lenders are encouraged to submit applications prior to August 18, 1997, as applications will be reviewed as they are received. If there are differences between any additional guidelines and this Notice, the requirements of this notice shall prevail. Notification of selected applications will be made by September 1, 1997. Commitments for guarantees will be issued on or before September 16, 1997. If RHS is unable to obligate section 538 funds for guaranteed loans by September 16, 1997, any remaining section 538 funds will be transferred for use prior to September 30, 1997, under the section 515 program. Qualified lenders may call the office of the Multi-Family Housing Processing Division of the Rural Housing Service, at 202-720-1604 for a copy of the application package. This is not a toll-free number. Hearing- or speech-impaired persons may access that number by calling toll-free the Federal Information Relay Service at (800) 877-8339.

ADDRESSES: Applications for participation in the demonstration program must be identified as "Section 538 Demonstration Program" on the envelope or wrapper and be submitted as follows: Director, Multi-family Housing Processing Division, Rural Housing Service, US Department of Agriculture, Room 5337 (stop 0781), 1400 Independence Ave., SW., Washington, DC 20250. Lenders shall submit an original (a FAX or E-mail copy is NOT acceptable) of the application to the above address by the application deadline.

FOR FURTHER INFORMATION CONTACT: Obediah G. Baker, Jr., Director, Multi-Family Housing Processing Division, US Department of Agriculture, South Agriculture Building, Room 5337 (stop 0781), 1400 Independence Ave., SW, Washington, DC 20250. Telephone:

(202) 720-1604. (This number is not toll-free.) Hearing- or speech-impaired persons may access that number by calling toll-free the Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: On March 28, 1996, President Clinton signed the "Housing Opportunity Program Extension Act of 1996," Public Law 104-120. One of the actions was the authorization of the section 538 Rural Rental Housing Guaranteed Loan Program. The program is intended to reach the needs of rural America by complementing the section 515 Rural Rental Housing Direct Loan Program. It is anticipated that beneficiaries of the program will be rural residents with low and moderate incomes. The rural residents will be provided rental housing through the use of loan guarantees. Partnership opportunities exist to utilize the section 538 program with other affordable housing programs.

In Fiscal Year (FY) 1997, the budget authority of \$783,000 will provide up to approximately \$25 million available under the section 538 demonstration program. The Agency is currently developing regulations which will be based on information gathered during administration of the FY 1996 and 1997 demonstration programs.

I. Purpose and Program Summary

Public Law 104-37 provided funds to the Department to implement a multifamily mortgage guarantee demonstration program subject to enactment of authorizing legislation. Public Law 104-120 provided authorization for that program with qualified lenders, the purpose of which is to demonstrate the effectiveness of providing new forms of Federal credit enhancement for the development of affordable multifamily housing by lenders.

The program has been designed to increase the supply of affordable multifamily housing through partnerships between RHS and major lending sources, as well as State and local housing finance agencies and bond issuers. Qualified lenders will be authorized to originate, underwrite, and close loans for multifamily housing projects. Projects requiring new construction or acquisition with rehabilitation of at least \$15,000 per unit will be considered. RHS will guarantee such loans upon presentation and review of appropriate certifications, project information and satisfactory completion of the appropriate level of environmental review by RHS. Lenders will be responsible for the full range of loan management, servicing, and property disposition activities

associated with these projects. The lender will be expected to provide servicing or contract for servicing of each loan it underwrites. RHS, in turn, commits to pay up to a maximum of 90 percent of the outstanding principal and interest balance in the case of default of the loan and filing of a claim, but in no event, not more than 90 percent of the original principal amount. Any losses would be based on a pro-rata split.

II. Eligible Housing and Tenants

A loan may be guaranteed only if the loan is used for the development costs of housing and related facilities as such term is defined in 7 CFR 1944.205. Proposals must also meet the following criteria:

(a) *Occupancy Requirements.* The housing must be available for occupancy only by low or moderate income families or persons, whose incomes at the time of initial occupancy do not exceed 115 percent of the median income of the area. After initial occupancy, a tenant's income may exceed these limits; however, rents, including utilities, are restricted to no more than 30 percent of the 115 percent of area Median Income for the term of the loan.

(b) *Location.* Units must be located in areas considered eligible as defined in 7 CFR 3550.10 (not just the designated areas as defined in 7 CFR 1944.228).

(c) *Minimum Complex Size.* Apartment complexes must consist of five or more rental dwelling units. The site may consist of two or more noncontiguous parcels of land situated so as to comprise a readily marketable real estate entity within an area small enough to allow convenient and efficient management.

(d) *Types of Housing.* For the purposes of the demonstration program, proposals for new construction or acquisition with rehabilitation of at least \$15,000 per unit will be considered. Complexes may contain units that are detached, semi-detached, row houses, or multifamily structures. The portion of the guarantee funds for acquisition with rehabilitation is limited to 25 percent of the program authority.

(e) *Housing Standards.* The standards established under 7 CFR 1944.215 "Special conditions," for housing and related facilities assisted under section 515, shall apply to housing and related facilities, the development costs of which are financed in whole or in part with a loan guaranteed under this program. The Agency will guarantee loans in which the fees and the proposed housing may exceed the amounts or size allowances and amenities contained in 7 CFR part 1944,

subpart E provided such costs and features are generally found in similar housing proposals for similar income families in the market area. Such costs, features and amenities may include larger units, dishwashers, microwaves, increased and multi-purpose community spaces, and developer's fees. The proposals under this program will be subject to the Necessary Assistance Reviews discussed in 7 CFR 1944.213(a), see **Federal Register** Volume 62, Number 88, pages 25061-25071 published May 7, 1997.

(f) *Tenant Protections.* The standards for the treatment of tenants of housing developed using amounts from a loan guaranteed under this program shall incorporate standards for lease and grievance procedures and tenant appeals of adverse actions used under the section 515 Rural Rental Housing Program.

(g) *Fair Housing and Equal Opportunity.* No person shall be subjected to discrimination because of race, color, religion, sex, disability, familial status, or national origin in the rental or advertising of rental dwellings, or in the availability of residential real estate related transactions involving RHS or housing in the Rural Development mission area. Borrowers and lenders must also comply with applicable Fair Housing and Equal Opportunity statutes.

(h) *Environmental.* The environmental requirements established under 7 CFR part 1940, subpart G, for housing and related facilities under the section 515 program shall apply to housing and related facilities under the section 538 program.

(i) *Preservation.* The housing developed will remain available for occupancy as provided in paragraph II(a) of this notice, for the period of the original term of the loan guaranteed unless the housing is acquired by foreclosure (or instrument in lieu of foreclosure) or the Administrator waives the applicability of such requirement for the loan only after determining, based on objective information, that the following three circumstances exist:

(1) There is no longer a need for low- and moderate-income housing in the market area in which the housing is located;

(2) Housing opportunities for low-income households and minorities will not be reduced as a result of the waiver; and

(3) Additional Federal assistance will not be necessary as a result of the waiver.

III. Loans Eligible for Guarantee

(a) *Eligible Borrowers.* A loan guaranteed under this program may be made to a nonprofit organization, an agency or body of any State government or political subdivision thereof, or a private entity.

(b) *Loan Terms.* Each loan guaranteed shall:

(1) Provide for complete amortization by periodic payments to be made for a term not to exceed 40 years (480 equal amortized monthly installments);

(2) Involve a fixed rate of interest agreed upon by the borrower and the lender that does not exceed the maximum allowable rate established by the Administrator. For purposes of the demonstration program, the maximum allowable rate is 200 basis points over the 30-year Treasury Bond Rate as published in the "Wall Street Journal" as of the business day previous to the business day the rate is set. Priority will be given to proposals that are up to 150 basis points; a higher priority will be given to proposals with the lowest number of basis points;

(3) Involve a principal obligation (including initial service charges, appraisal, inspection, and other reasonable fees) not to exceed:

(i) In the case of a borrower that is a nonprofit organization or an agency or body of any State or local government, up to 97 percent of the development costs of the housing and related facilities or the value of the housing and facilities, whichever is less;

(ii) In the case of a borrower that is a for-profit entity or other entity not referred to in paragraph III(b)(3)(i) of this notice, up to 90 percent of the development costs of the housing and related facilities or the value of the housing and facilities, whichever is less;

(iii) In the case of any borrower, for such part of the property as may be attributable to dwelling use, the applicable maximum per unit dollar amount limitations under section 207(c) of the National Housing Act; and

(iv) In the case of a borrower utilizing Low Income Housing Tax Credits, a review will be conducted in conjunction with the applicable tax credit administration entity to determine if the proposal is in conformance with subsidy layering requirements at 7 CFR 1944.213, which stipulates that the government will provide no more than the minimum amount of assistance necessary to make the complex financially feasible.

(4) Be secured by a first mortgage on the housing and related facilities for which the loan is made, or in the case where the loan upon which the RHS

guarantee is requested is not the primary funding source, be secured by a parity lien;

(5) May be a permanent loan or a combination construction and permanent loan. The agency will not guarantee a construction loan that will not be rolled into a permanent loan which will have an agency guarantee. For the construction loan, which may not exceed 12 months, the RHS guarantee will be limited to 60 percent of the work in place. For example: total construction advances for completed work of \$1,000,000 × 60 percent would result in a \$600,000 maximum guarantee on the work in place. RHS will also consider a higher level of guarantee (not to exceed 90 percent of the work in place) for construction contracts which are bonded or have letters of credit for advances, or both; and

(6) For 20 percent of the loans made under this demonstration program, RHS shall provide the borrower with assistance in the form of interest credits to the extent necessary to reduce the rate of interest under paragraph III(b)(2) of this notice to the applicable Federal rate, as such term is used in section 42(l)(2)(D) of the Internal Revenue Code of 1986.

(c) *Refinancing of Loans Made Under the Program.* Any loan guaranteed under the program may be refinanced and extended in accordance with the terms and conditions that the Agency shall prescribe, but in no event for an additional amount or term that exceeds the limitations under paragraph III(b) of this notice.

(d) *Nonassumption.* The borrower under a loan that is guaranteed under this program and under which any portion of the principal obligation or interest remains outstanding may not be relieved of liability with respect to the loan, notwithstanding the transfer of property for which the loan was made. Loans guaranteed under this program may be made on a recourse or nonrecourse basis.

(e) *Issuance of Guarantee on Permanent Loans.* Guarantees may be issued on permanent loans financing new construction once the final certificate of occupancy for the complex has been issued by the appropriate governmental body.

(f) It is anticipated that complexes developed under this program may utilize other affordable housing programs such as the Low Income Housing Tax Credit, taxable bonds, HOME Investment Partnerships Program (HOME) funds, and other State or locally funded tenant assistance or grants. Tax-exempt financing is not

eligible for a loan guarantee in this year's demonstration program.

IV. Guarantee Provisions

(a) *Lender eligibility.* Those lenders currently approved and considered eligible by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Bank members, or the Department of Housing and Urban Development for guaranteed loan programs supporting multifamily housing will be considered approved lenders for this demonstration program. Lenders may use their own underwriting standards and loan terms and conditions with approval from RHS subject to statutory program constraints. In addition, State Housing Finance Agencies (HFAs) are also considered eligible lenders to participate in the demonstration program provided they demonstrate they have the ability to underwrite, originate, process, close, service, manage, and dispose of multifamily housing loans in a prudent manner. Other lenders have the opportunity to enter into a correspondent bank relationship with approved lenders in order to participate in the program.

(b) *Extent of Guarantee.* RHS will guarantee repayment of an amount not exceeding 90 percent of the total of the amount of the unpaid principal and interest of the loan but, in all cases, not more than 90 percent of the original principal amount. Any losses would be based on a pro-rata split. For example: Assume the Loan Amount and Total Development Cost are equal to \$1,000,000 \times 90 percent (For Profit Borrower) \times 90 percent Guarantee = \$810,000 coverage. Assume the loan was liquidated and property sold for \$600,000. The claim would be \$900,000 - \$600,000 = \$300,000 \times 90 percent = \$270,000 maximum government payment on loss claim. The lender's loss would be \$30,000.

(c) *Guarantee Fee.* At the time of issuance of a loan guarantee under this program, RHS will collect a fee equal to 1 percent of the guaranteed principal obligation of the loan from the lender. RHS will also collect an annual servicing fee of 50 basis points ($\frac{1}{2}$ percent) based on the outstanding principal and interest of the guarantee portion of the loan on the first and subsequent anniversary of the promissory note.

(d) *Transferability of the Guarantee and Servicing.* It is anticipated that loans guaranteed under this program may be sold into the secondary market. The guarantee and the servicing may be transferred, either combined or

separated, to other eligible lenders with the written consent of RHS.

(e) *Payment Under Guarantee.*

(1) Notice of default. In the event of default by the borrower on a loan guaranteed under this program, the holder of the guarantee certificate for the loan shall provide written notice of the default to the Administrator.

(2) Lenders will be required to discuss future servicing strategies with RHS prior to proceeding to liquidation. Before any payment under a guarantee is made, the holder of the guarantee certificate must exhaust all reasonable possibilities of collection on the loan.

(3) Foreclosure. After receiving notice under paragraph IV(e)(1) of this notice and providing written notice of action to RHS, the holder of the guarantee certificate for the loan may initiate foreclosure proceedings, with the concurrence of RHS, in a court of competent jurisdiction, to obtain possession of the security property. After the court issues a final order authorizing foreclosure on the property, the holder of the certificate shall be entitled to payment by RHS under the guarantee upon:

(i) Conveyance to RHS of title to the security property;

(ii) Submission to RHS of a claim for payment under the guarantee; and

(iii) Assignment to RHS of all the claims of the holder of the guarantee against the borrower or others arising out of the loan transaction or foreclosure proceedings, except claims released with the consent of RHS.

(4) Acceptance of the Assignment by RHS. After receiving notice under paragraph IV(e)(1) of this notice, RHS may accept assignment of the loan if RHS determines that the assignment is in the best interests of the United States. Assignment of a loan under this paragraph shall include conveyance to RHS of all rights and interests arising under the loan, and assignment to RHS of all claims against the borrower or others arising out of the loan transaction. Upon assignment of a loan under this paragraph, the holder of a guarantee for the loan shall be entitled to payment by RHS under the guarantee. Upon payment, in whole or in part, to the holder, the note or judgment evidencing the debt shall be assigned to the United States and the holder shall have no further claim against the borrower or the United States.

V. Demonstration Selection Criteria

(a) The Agency intends under the demonstration program to fund varying financing proposals to help determine the areas of need, the types of financing packages possible and the demand in

the various eligible market areas. Selection of proposals under this demonstration program will be based on the following criteria:

(1) Flexibility, innovation and variation of funding models.

(2) Partnering and leveraging in order to develop the maximum number of housing units and promote partnerships with states, local communities, and other partners with similar housing goals. RHS participation loans and leveraging are encouraged.

(3) No more than one viable application will be selected in any State (unless the number of viable applications are limited and sufficient funds remain to allow more than one application in any one State); and to increase the variety of experience under the demonstration, priority will be provided to those applications from States that have not previously received a commitment from the FY 1996 demonstration program. The States that received a commitment from the FY 1996 demonstration program were Florida, Kansas, Missouri, Nebraska, North Carolina, Vermont, and West Virginia.

(4) Priority will be provided to the proposals that set the interest rate up to 150 basis points over the 30 Year Treasury Rate; the lower the basis points, the higher the priority. However, the program will permit proposals that require 200 basis points over the 30 Year Treasury Rate.

(5) Administrator's discretion in order to effectively use funding to best explore program structure and effectiveness consistent with the best interests of the Government.

(b) For 20 percent of the loans made under the demonstration program, RHS shall provide the borrower with interest credits to the extent necessary to reduce the rate of the loan to the applicable Federal rate. The maximum amount of loan guarantee is \$1.5 million on a loan requesting interest credit. Proposals that could be viable with or without interest credits are encouraged to submit an application showing financial and market feasibility under either scenario. Applications proposing to receive interest credit will be selected using the following criteria:

(1) Geographical location with emphasis on smaller rural communities versus larger rural communities.

(2) The most needy communities based on census income data showing the preponderance of low and moderate income families.

(3) Commitments by the applicant to maintain occupancy standards throughout the term of the loan for families with low and moderate

incomes, with a priority at initial occupancy for low income families.

(4) The lowest overall proportional effective subsidy cost to the Government.

(5) Preference will be given to family proposals with large bedroom mixes (3/4/5 bedrooms).

(6) Those proposals to be developed in a colonia, tribal land, or EZ/EC community, or in a place identified in the state Consolidated Plan or state needs assessment as a high need community for multifamily housing will receive preference.

VI. Review Criteria

RHS will review each request for participation under the demonstration program to determine if the lender and the proposal meet all the requirements of this notice and the lender demonstrates the ability to underwrite, originate, process, close, service, manage, and dispose of multifamily loans in a prudent manner. Applications will be reviewed to determine financial feasibility, compliance with cost limitations, and market need of the proposal. RHS will review each application for compliance with subsidy layering requirements, which stipulates that the government will provide no more than the minimum amount of assistance necessary to make the complex financially feasible pursuant to 7 CFR 1944.213(a)(2), see **Federal Register** Volume 62, Number 88, pages 25061-25071 published May 7, 1997.

RHS also reserves the right to negotiate with potential lenders over the scope of the proposal to ensure the best interests of the Government and objectives of the demonstration program are achieved.

It is the policy of RHS to consider environmental quality as equal with economic, social, and other relevant factors in program development and decision making. Proposals which have the potential for adverse impact to protected resources (wetlands, floodplains, and important farmland, for example) will receive low priority, since the brief period of time allocated for obligation of funds may be insufficient for RHS to satisfactorily complete the environmental review process if the proposal has adverse environmental impacts. Therefore, it is important that lenders and applicants submit proposals which minimize the potential to adversely impact the environment.

Since RHS will complete the appropriate environmental review at the field level, the appropriate field office will need certain information from the lender or applicant in order to complete the environmental review. Lenders or

applicants who plan to file an application should request the application package at the earliest date possible for directions on how to contact the applicable field office.

VII. Other Matters

(a) *Environmental Finding*. A Finding of No Significant Impact with respect to the environment has been made in accordance with RHS regulations at 7 CFR part 1940, subpart G.

(b) *Civil Rights Impact Analysis*. It is the policy within the Rural Development mission area to ensure that the consequences of any proposed project approval do not negatively or disproportionately affect program beneficiaries by virtue of race, color, sex, national origin, religion, age, disability, marital or familial status. To ensure that any proposal under this demonstration program complies with these objectives, the RHS approval official will complete Form RD 2006-38, "Civil Rights Impact Analysis Certification."

(c) *Executive Order 12612, Federalism*. The policies and procedures contained in this Notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the Notice is not subject to review under the Order.

(d) *Paperwork Reduction Act*. The information collection requirements within this notice are covered under OMB Nos. 0575-0042, 0575-0047, 0575-100, 0575-0024, 0570-0014, and 0575-0137.

Dated: June 25, 1997.

Jan E. Shadburn,

Acting Administrator, Rural Housing Service.

[FR Doc. 97-17269 Filed 7-1-97; 8:45 am]

BILLING CODE 3410-XV-U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Georgia Transmission Corp.; Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact (FONSI) with respect to a request by Georgia Transmission Corporation for approval to construct the proposed 115/

25 kV St. George Substation and 115 kV St. George Transmission Line. The FONSI is based on a borrower's environmental report (BER) submitted to RUS by Georgia Transmission Corporation. RUS conducted an independent evaluation of the report and concurs with its scope and content. In accordance with RUS Environmental Policies and Procedures, 7 CFR 1794.61, RUS has adopted the BER as its environmental assessment for the project.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW, Washington, D.C. 20250-1571, telephone (202) 720-0468, E-mail at bquigel@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The substation and transmission line are proposed to be located in Charlton County, Georgia. The transmission line will interconnect with Georgia Power Company's existing 115 kV Kettle Creek to Folkston Transmission Line at a point northwest of the town of Homeland, traverse south past the west side of Folkston, and terminate east of St. George just south of Highway 94 and west of the St. Mary River at the site of the proposed St. George Substation. Approximately 1.7 acres of land will be disturbed to accommodate placement of the St. George Substation. The length of the transmission line is approximately 27.5 miles. The width of the proposed transmission line right-of-way will be 75 feet for most of the route with the right-of-way being expanded to 100 feet in wetland areas where maintenance access will need to be increased so that adverse impacts to wetland areas can be avoided.

RUS considered the alternatives of no action, constructing a 230/25 kV substation at the proposed St. George Substation site and the construction of 65 miles of 230 kV transmission line from Waycross to the proposed substation site. Under the no action alternative, RUS would not approve construction of the substation and transmission line. Since RUS believes that Georgia Transmission Corporation has a need to upgrade its transmission facilities to relieve overloading on two of Okefenoke Rural Electric Membership Corporation's existing circuits in the area and to allow Okefenoke Rural Electric Membership Corporation to serve a new wood chip mill near St. George, the no action alternative is not considered acceptable. Construction of the proposed 115/25 kV substation and 115 kV transmission line is preferred to

the alternative of constructing a 230/25 kV substation and a 230 kV transmission line which would be over twice as long. This is due primarily to additional project cost and the greater amount of environmental impact that would likely result from a longer transmission line. Three substation sites and three transmission line routes were considered. The preferred substation site will require the least amount of vegetation clearing and least impact to land use. The preferred transmission line route is longer than the two alternative routes considered; however, it is preferred because it avoids impacts to the more densely developed areas around the cities of Folkston and St. George and it would affect fewer residential properties and historic resources known to occur in the project area.

Copies of the BER and FONSI are available for review at, or can be obtained from, RUS at the address provided herein or from Mr. Clayton M. Doherty, Construction and Project Management Department, Georgia Transmission Corporation, P.O. Box 2088, 2100 East Exchange Place, Tucker, Georgia 30085-2088, telephone (770) 270-7719, E-mail clay.doherty@gatrans.com.

Dated June 30, 1997.

Blaine D. Stockton, Jr.,

Assistant Administrator, Electric Program.

[FR Doc. 97-17465 Filed 7-1-97; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062597A]

New England Fishery Management Council; Public Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will be held on Wednesday, July 9, 1997, at 10 a.m., and on Thursday, July 10, 1997, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Colonial Hilton, 427 Walnut Street (Route 128 South), Wakefield, MA; telephone (617) 245-9300. Requests for special accommodations should be

addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097; telephone: (617) 231-0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (617) 231-0422.

SUPPLEMENTARY INFORMATION:

July 9, 1997

Following introductions, the Scallop Committee's Plan Development Team will provide a report on the effectiveness of the Council's sea scallop management program, including management recommendations. The Interspecies Committee will review its efforts to develop protocols for reopening areas closed to fishing activities. The Responsible Fishing Committee will report on its continuing discussion of a fishermen's Code of Conduct and also issues related to bycatch in Council-managed fisheries. During the afternoon session, the Atlantic Sea Herring Committee will discuss and ask for Council approval of a public information/scoping document that will identify major issues to be considered during the fishery management plan development. There will be an update on progress to finalize (monkfish) Amendment 9 to the Northeast Multispecies Fisheries Management (FMP). Before adjourning for the day, there will be reports from the Council Chairman; Executive Director; Regional Administrator, Northeast Region, NMFS (Regional Administrator); Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons; and representatives of the Coast Guard and the Atlantic States Marine Fisheries Commission.

The Regional Administrator will consult the Council regarding a proposal from the Massachusetts Division of Marine Fisheries (DMF) to conduct an experimental small-mesh trawl fishery for whiting from September 1 through December 31, 1997. There will be a discussion and opportunity for public comment. This proposal builds on last fall's successful experimental fishery in Cape Cod Bay where the DMF-developed "raised footrope" trawl effectively captured whiting with minimal by-catch. DMF has requested the time and area of the experimental fishery be expanded to enable vessels to fish in additional specified areas off Massachusetts in Massachusetts Bay, Cape Cod Bay, and waters east of Cape Cod that have historically produced profitable catches of whiting. The experiment is intended to demonstrate

the efficacy of the raised-footrope trawl in reducing the bycatch of non-target species, particularly in reducing the bycatch of regulated multispecies to below 5 percent, and to evaluate the gear over a wider area than in last year's experiment.

July 10, 1997

NMFS will hold a Stock Assessment Public Review Workshop immediately after the Council reconvenes on Thursday. It will present an advisory on the stock status of Gulf of Maine and Georges Bank cod, Georges Bank haddock, and Georges Bank and Southern New England yellowtail flounder. Following the workshop a groundfish subcommittee will report on its progress to develop area closures as an alternative to the cod trip limit in the Multispecies Plan. During the remainder of the Groundfish Committee's report, there will be further discussion of a framework adjustment to the FMP which would modify the Gulf of Maine cod trip limit to account for overages. Specific measures would a) require vessels fishing under the trip limit to call a (cod hailing) telephone number upon off-loading and at least once every 14 days; and b) allow vessels exceeding the trip limit to resume fishing only when the days-at-sea for that trip equate to their cod landings. NMFS will provide information on trip limit enforcement efforts. The Council also plans to develop comments on a proposed experimental longline fishery for halibut in the northern Gulf of Maine. The afternoon session will include reports from the Aquaculture, Gear Conflict, and Lobster Committees. The Aquaculture Committee will provide an update on the development of a Council aquaculture policy. The Gear Conflict Committee will discuss progress to date on the resolution of the northern Georges Bank conflict between otter trawl gear and lobster traps. The Lobster Committee will present its recommendations on management measures proposed by the Atlantic States Marine Fisheries Commission. The Council will adjourn the meeting after the conclusion of any other outstanding business.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see ADDRESSES) at least 5 days prior to the meeting date.

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

Dated: June 26, 1997.

Bruce Morehead,

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

[FR Doc. 97-17298 Filed 7-1-97; 8:45 am]

BILLING CODE 3510-22-F

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' next meeting is scheduled for July 24, 1997 at 10:00 a.m. in the auditorium of the National Building Museum, in the Pension Building, Judiciary Square, 401 F Street, N.W., Washington, D.C. 20001 to discuss conceptual designs for the World War II Memorial and other projects affecting the appearance of Washington, D.C., including buildings, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, Suite 312, Pension Building, 441 F Street, N.W. or call 202-504-2200.

Dated in Washington, D.C., June 23, 1997.

Charles H. Atherton,
Secretary.

[FR Doc. 97-17244 Filed 7-1-97; 8:45 am]

BILLING CODE 6330-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Temporary Amendment to the Requirements for Participating in the Special Access Program for Caribbean Basin Countries

June 26, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending amendment of requirements for participation in the Special Access Program for a temporary period.

EFFECTIVE DATE: June 23, 1997.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

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).

A notice and letter to the Commissioner of Customs published in the **Federal Register** on September 20, 1996 (61 FR 49439) announced the temporary amendment to the foreign origin exception for findings and trimmings under the Special Access Program. By date of export, the foreign origin exception for findings and trimmings, including elastic strips of less than one inch in width, under the Special Access Program were temporarily amended to include non-U.S. formed, U.S. cut interlinings for the period September 23, 1996 through June 22, 1997 for women's and girls' suit jackets and suit-type jackets in Categories 435, 444, 635 and 644. This amendment is being extended for a six-month period beginning on June 23, 1997 and extending through December 22, 1997 for women's and girls' suit jackets and suit-type jackets entered under the Special Access Program (9802.00.8015) provided they are cut in the United States and are of a type described below:

(1) A chest type plate, "hymo" piece or "sleeve header" of woven or weft-inserted warp knit construction of coarse animal hair or man-made filaments used in the manufacture of women's or girls' tailored suit jackets and suit-type jackets;

(2) A woven fabric which contains and exhibits properties of resiliency which render the fabric especially suitable for attachment by fusing with a thermo-plastic adhesive to the coat-front, side body or back of women's or girls' tailored suit jackets and suit-type jackets.

Note that the amendment is not being extended for weft-inserted warp knit fabric which contains and exhibits properties of elasticity and resilience which render the fabric especially suitable for attachment by fusing with a thermo-plastic adhesive to the coat-front, side body or back of women's or girls' tailored suit jackets and suit-type jackets. These interlinings must be formed and cut in the United States.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 26, 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 September 16, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns the foreign origin exception for findings and trimmings under the Special Access Program.

Effective on June 23, 1997, by date of export, you are directed to extend, for the six-month period June 23, 1997 through December 22, 1997, the amendment to treat non-U.S. formed, U.S.-cut interlinings, further described below, for women's and girls' wool and man-made fiber suit jackets and suit-type jackets in Categories 435, 444, 635 and 644 as qualifying for the exception for findings and trimmings, including elastic strips less than one inch in width, created under the Special Access Program established effective September 1, 1986 (see 51 FR 21208). In the aggregate, such interlinings, findings and trimmings must not exceed 25 percent of the cost of the components of the assembled article.

The amendment implemented by this directive shall be of a temporary nature. With respect to women's and girls' suit jackets and suit-type jackets in Categories 435, 444, 635 and 644, the amendment will terminate on December 22, 1997, by date of export.

As described above, non-U.S. formed, U.S.-cut interlinings may be used in imports of women's or girls' suit jackets and suit-type jackets entered under the Special Access Program (9802.00.8015) provided they are cut in the United States and of a type described below:

(1) A chest plate, "hymo" piece or "sleeve header" of woven or weft-inserted warp knit construction of coarse animal hair or man-made filaments used in the manufacture of women's or girls' tailored suit jackets and suit-type jackets;

(2) A woven fabric which contains and exhibits properties of resiliency which render the fabric especially suitable for attachment by fusing with a thermo-plastic adhesive to the coat-front, side body or back of women's or girls' tailored suit jackets and suit-type jackets.

This amendment is not being extended for weft-inserted warp knit fabric which contains and exhibits properties of elasticity and resilience which render the fabric especially suitable for attachment by fusing with a thermo-plastic adhesive to the coat-front, side body or back of women's or girls' tailored suit jackets and suit-type jackets. These interlinings must be formed and cut in the United States.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97-17315 Filed 7-1-97; 8:45 am]

BILLING CODE 3510-DR-F

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request: All-Terrain Vehicle Exposure Survey

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the April 15, 1997, **Federal Register** (62 FR 18333), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek approval of a collection of information to determine consumer exposure to the hazards associated with the use of All-Terrain Vehicles ("ATVs"). The Commission now announces that it has submitted to the Office of Management and Budget a request for approval of that collection of information.

The collection of information consists of a national telephone survey of households. Information obtained from ATV-owning households will have two primary uses. First, the results of the survey will be compared to those of earlier ATV exposure surveys (conducted in 1986 and 1989) to evaluate changes in the characteristics and use patterns of non-occupational ATV drivers over time. Second, data from the survey will be analyzed with data obtained from in-depth investigations of persons who were injured using ATVs for non-occupational purposes to determine and quantify ATV risk factors. This risk analysis will reveal current risk patterns and how they have changed since the late 1980s.

Results of the collection of information will assist the Commission in determining what, if any, action it should take with regard to ATVs after April 28, 1998, when Final Consent Decrees signed by five major distributors of ATVs will expire.

Additional Information About the Request for Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Survey to determine consumer exposure associated with the use of All-Terrain Vehicles.

Type of request: Approval of a collection of information.

General description of respondents: ATV-owning households.

Estimated number of respondents: 500.

Estimated average number of hours per respondent: .34 hours (20 minutes).

Estimated number of hours for all respondents: 167 hours.

Comments: Comments on this request for approval of information collection should be sent within 30 days of publication of this notice to (1) Victoria Wassmer, Desk Officer, Office of Information and Regulatory Affairs,

Office of Management and Budget, Washington, DC 20503; telephone: (202) 395-7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

Copies of this request for information collection and supporting documentation are available from Robert Frye, Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504-0416, extension 2243.

Dated: June 27, 1997.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97-17408 Filed 7-1-97; 8:45 am]

BILLING CODE 6355-01-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0034]

Proposed Collection; Comment Request Entitled Examination of Records by Comptroller General and Contract Audit

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000-0034).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Examination of Records by Comptroller General/Audit-Negotiation now retitled Examination of Records by Comptroller General and Contract Audit. The clearance currently expires on October 31, 1997.

DATES: *Comment Due Date:* September 2, 1997.

FOR FURTHER INFORMATION CONTACT: Jerry Olson, Federal Acquisition Policy Division, GSA (202) 501-3221.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: General Services Administration, FAR

Secretariat (MVRS), 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000-0034 in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Audit and Records-Negotiation clause, 52.215-2; Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items clause, 52.212-5(d); and Audit and Records-Sealed Bidding clause, 52.214-26, implement the requirements of 10 U.S.C. 2313, 41 U.S.C. 254, and 10 U.S.C. 2306. The statutory requirements are that the Comptroller General and/or agency shall have access to, and the right to, examine certain books, documents and records of the contractor for a period of 3 years after final payment. The record retention periods required of the contractor in the clauses are for compliance with the aforementioned statutory requirements. The information must be retained so that audits necessary for contract surveillance, verification of contract pricing, and reimbursement of contractor costs can be performed.

B. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, 19,142; hours per recordkeeper, 3.34; total recordkeeping burden hours, 63,934; recordkeeping retention period, 3 years.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW., Room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0034 in all correspondence.

Dated: June 27, 1997.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 97-17385 Filed 7-1-97; 8:45 am]

BILLING CODE 6820-34-P

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of Defense (DoD) Commercial Air Carrier Quality and Safety Review Program.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary of Defense announces the proposed reinstatement of a public collection and seeks public comment on the provisions thereof. 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 proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments by September 2, 1997.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the DoD Air Carrier and Analysis Office (HQ AMC/DOB), 402 Scott Drive, Unit 3A1, Scott Air Force Base, IL 62225-5302, ATTN: Mr. Bob Shannon.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instrument, please write to the above address or call DoD Air Carrier and Analysis Office (HQ AMC/DOB), at (618) 256-3092.

Title, Associated Form, and OMB Number: DoD Statement of Intent, AMC Form 207, OMB Number 0701-0137.

Needs and Uses: The information collection requirement is necessary to assist in the overall evaluation of commercial aircraft to provide quality, safe, and reliable airlift service when procured by the Department of Defense.

Affected Public: Businesses or other for-profit.

Annual Burden Hours: 1,230.

Number of Respondents: 30.

Responses per Respondent: 1.

Average Burden for Respondent: 41 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are commercial air carriers desiring to supply airlift services to the Department of Defense. AMC Form 207 provides vital information from the carriers needed to

determine their eligibility to participate in the DoD Air Transportation Program.

Barbara A. Carmichael,

Air Force Federal Register Liaison Officer.

[FR Doc. 97-17266 Filed 7-1-97; 8:45 am]

BILLING CODE 3910-01-P

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies, State Agencies for Approval of Public Postsecondary Vocational Education

AGENCY: Department of Education.

ACTION: Request for comments on agencies applying to the Secretary for renewal of recognition.

DATES: Commenters should submit their written comments by August 18, 1997 to the address below.

FOR FURTHER INFORMATION CONTACT:

Karen W. Kershenstein, Director, Accreditation and Eligibility Determination Division, U.S. Department of Education, 600 Independence Avenue, SW., Room 3915 ROB-3, Washington, DC 20202-5244, telephone: (202) 708-7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 7 p.m., Eastern time, Monday through Friday.

SUBMISSION OF THIRD-PARTY COMMENTS:

The Secretary of Education recognizes, as reliable authorities as to the quality of education offered by institutions or programs within their scope, accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education that meet certain criteria for recognition. The purpose of this notice is to invite interested third parties to present written comments on the agencies listed in this notice that have applied for initial or continued recognition. A subsequent **Federal Register** notice will announce the meeting and invite individuals and/or groups to submit requests for oral presentation before the Advisory Committee on the agencies being reviewed. That notice, however, does not constitute another call for written comment. This notice is the only call for written comment.

All comments received in response to this notice will be reviewed by Department staff as part of its evaluation of the agencies' compliance with the Secretary's Criteria for Recognition. In order for Department staff to give full consideration to the comments received and to address them in the staff analyses that will be presented to the Advisory Committee at its November 1997

meeting, the comments must arrive at the address listed above not later than August 18, 1997. Comments received after the deadline will be reviewed by Department staff, which will take action, as appropriate, either before or after the meeting, should the comments suggest that an accrediting agency is not acting in accordance with the Secretary's Criteria for Recognition.

All comments must relate to the Secretary's Criteria for the Recognition of Accrediting Agencies. Comments pertaining to agencies whose interim reports will be reviewed must be restricted to the concerns raised in the Secretary's letter for which the report is requested.

The National Advisory Committee on Institutional Quality and Integrity (the "Advisory Committee") advises the Secretary of Education on the recognition of accrediting agencies and State approval agencies. The Advisory Committee is scheduled to meet November 19-21, 1997 in Washington, DC. All written comments in response to this notice that are received by the Department by the deadline will be considered by both the Advisory Committee and the Secretary. Comments received after the deadline, as indicated previously, will be reviewed by Department staff, which will take follow-up action, as appropriate, either before or after the meeting. Commenters whose comments are received after the deadline will be notified by staff of the disposition of those comments.

The following agencies will be reviewed during the November 1997 meeting of the Advisory Committee:

Nationally Recognized Accrediting Agencies and Associations

Petitions for Renewal of Recognition

1. Accreditation Board for Engineering and Technology, Inc. (Scope of recognition: the accreditation of basic (baccalaureate) and advanced (master's) level programs in engineering, associate and baccalaureate degree programs in engineering technology, and engineering-related programs at the baccalaureate and advanced degree level)

2. Accrediting Council for Continuing Education and Training (Scope of recognition: The accreditation of institutions of higher education that offer non-collegiate continuing vocational education programs and higher education programs of non-collegiate continuing vocational education)

3. American Optometric Association, Council on Optometric Education

(Scope of recognition: The accreditation and preaccreditation ("Reasonable Assurance/Preliminary Approval" (for professional degree programs) and "Candidacy Pending" (for optometric residency programs in facilities of Veterans' Administration)) of professional optometric degree programs, optometric residency programs, and optometric technician programs)

4. Association for Clinical Pastoral Education, Inc., Accreditation Commission (Scope of recognition: The accreditation and preaccreditation ("Candidacy for Accredited Membership") of basic, advanced, and supervisory clinical pastoral education programs)

5. Commission on Opticianry Accreditation (Scope of recognition: The accreditation of two-year programs for the ophthalmic dispenser and one-year programs for the ophthalmic laboratory technician)

6. National Association of Schools of Art and Design, Commission on Accreditation (Scope of recognition: The accreditation of institutions and units within institutions offering degree-granting and non-degree-granting programs in art, design, and art/design-related disciplines)

7. National Association of Schools of Dance, Commission on Accreditation (Scope of recognition: The accreditation of institutions and units within institutions offering degree-granting and non-degree-granting programs in dance and dance-related disciplines)

8. National Association of Schools of Music, Commission on Accreditation, Commission on Non-Degree-Granting Accreditation, and Commission on Community/Junior College Accreditation (Scope of recognition: the accreditation of institutions and units within institutions offering degree-granting and non-degree-granting programs in music and music-related disciplines, including community/junior colleges and independent degree-granting and non-degree-granting institutions)

9. National Association of Schools of Theatre, Commission on Accreditation (Scope of recognition: The accreditation of institutions and units within institutions offering degree-granting and non-degree-granting programs in theatre and theatre-related disciplines)

10. New England Association of Schools and Colleges (Scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of non-degree granting postsecondary vocation, technical and career institutions and degree-granting institutions of higher education

awarding an associate degree in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont)

11. North Central Association of Colleges and Schools, Commission on Institutions of Higher Education (Scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of institutions of higher education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, and Wyoming)

12. Northwest Association of Schools and Colleges, Commission on Colleges (Scope of recognition: the accreditation and preaccreditation ("Candidate for Accreditation") of institutions of higher education in Alaska, Idaho, Montana, Nevada, Oregon, Utah, and Washington)

13. Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges (Scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of community and junior colleges in California, Hawaii, American Samoa, Guam, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands)

Petitions for Renewal of Recognition and Expansion of Scope

1. American Psychological Association, Committee on Accreditation (Current scope of recognition: The accreditation of doctoral programs in clinical, counseling, school, and combined professional-scientific psychology, and predoctoral internship training programs in professional psychology). (Requested expansion of scope: The accreditation of post-doctoral residency programs in professional psychology)

2. American Speech-Language-Hearing Association (Current scope of recognition: The accreditation of Master's degree programs in speech-language pathology and audiology). (Requested expansion of scope: The accreditation and preaccreditation ("Candidacy") of graduate educational programs that provide for entry-level professional preparation with a major emphasis in audiology and/or speech-language pathology)

3. Council on Occupational Education (Current scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of non-degree granting postsecondary occupational/vocational institutions and those postsecondary occupational/vocational education institutions

currently accredited by the Council that either have state authorization to grant the applied associate degree in specific vocational/occupational fields or that receive such authorization during the Council's current recognition period). (Requested expansion of scope: The accreditation and preaccreditation ("Candidate for Accreditation") of postsecondary, prebaccalaureate, degree-granting and non-degree-granting vocational education institutions nationwide)

Interim Reports (An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted recognition to the agency)

1. American Bar Association, Council of the Section of Legal Education and Admissions to the Bar

2. Middle States Association of Colleges and Schools, Commission on Higher Education

3. National Environmental Health Science and Protection Accreditation Council

4. New York State Board of Regents

5. Southern Association of Colleges and Schools, Commission on Colleges

6. Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities

Request for an Expansion of Scope

1. Accrediting Bureau of Health Education Schools (Current scope of recognition: the accreditation of private, postsecondary allied health education institutions, private medical assistant programs, public and private medical laboratory technician programs, and allied health programs leading to the Associate of Applied Science and the Associate of Occupational Science degree). (Requested expansion of scope: the accreditation of institutions offering predominantly allied health education programs. "Predominantly" is defined by the agency as at least 70 percent of one of the following: (1) Students enrolled in allied health programs (2) revenues received from allied health programs enrollments (3) programs offered in allied health, or (4) courses offered in allied health)

State Agency Recognized for the Approval of Public Postsecondary Vocational Education

Interim Report

1. New York State Board of Regents, Vocational Education

State Agency Recognized for the Approval of Nurse Education

Interim Report

1. New York State Board of Regents, Nursing Education Unit

Federal Agency Seeking Degree-Granting Authority

In accordance with the Federal policy governing the granting of academic degrees by Federal agencies (approved by a letter from the Director, Bureau of the Budget, to the Secretary, Health, Education, and Welfare, dated December 23, 1954), the Secretary is required to establish a review committee to advise the Secretary concerning any legislation that may be proposed that would authorize the granting of degrees by a Federal agency. The review committee forwards its recommendation concerning a Federal agency's proposed degree-granting authority to the Secretary, who then forwards the committee's recommendation and the Secretary's recommendation to the Office of Management and Budget for review and transmittal to the Congress. The Secretary uses the Advisory Committee as the review committee required for this purpose. Accordingly, the Advisory Committee will review the following institution at this meeting:

Proposed Master's Degree-Granting Authority

1. U.S. Army War, Carlisle, PA (request to award a master's degree in Strategic Studies)

Public Inspection of Petitions and Third-Party Comments

All petitions and interim reports, and those third-party comments received in advance of the meeting, will be available for public inspection and copying at the U.S. Department of Education, ROB-3, Room 3915, 7th and D Street, SW., Washington, DC 20202-5244, telephone (202) 708-7417 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, until November 3, 1997. They will be available again after the November 19-21 Advisory Committee meeting. It is preferred that an appointment be made in advance of such inspection or copying.

Dated: June 27, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97-17082 Filed 7-1-97; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT97-41-000]

Algonquin Gas Transmission Company; Notice of Refund Report

June 26, 1997.

Take notice that on June 23, 1997, Algonquin Gas Transmission Company (Algonquin) tendered for filing a refund report pursuant to Ordering Paragraph C of the Commission's February 22, 1995, order in Gas Research Institute (GRI), Docket No. RP95-124-000.

Algonquin states that on May 30, 1997, Algonquin received its share of the GRI refund totaling \$1,230,805.00.

Algonquin states that on June 7, 1997, each eligible firm customer was credited its pro rata share of the GRI refund.

Algonquin states that copies of the filing were served on each of its affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-17327 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97-2920-000]

Boston Edison Company; Notice of Filing

June 26, 1997.

Take notice that on June 5, 1997, Boston Edison Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 8, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-17337 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97-2921-000]

Boston Edison Company; Notice of Filing

June 26, 1997.

Take notice that on June 5, 1997 Boston Edison Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 8, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-17338 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. ER97-3026-000]

Boston Edison Company; Notice of
Filing

June 26, 1997.

Takes notice that on May 20, 1997, Boston Edison Company (Boston Edison) tendered for filing a Standstill Agreement between itself and The Boylston Municipal Light Department, City of Holyoke Gas & Electric Department, Hudson Light and Power Department, Littleton Electric Light & Water Departments, Marblehead Municipal Light Department, Middleborough Gas and Electric Department, North Attleborough Electric Department, Peabody Municipal Light Plant, Shrewsbury's Electric Light Plant, Templeton Municipal Light Plant, Wakefield Municipal Light Department, West Boylston Municipal Lighting Plant, and Westfield Gas & Electric Light Department (Municipals). The Standstill Agreement extends through July 31, 1997 the time in which the Municipals may institute a legal challenge to the 1995 true-up bill under their respective contracts to purchase power from Boston Edison's Pilgrim Nuclear Station.

Boston Edison requests waiver of the Commission's notice requirement to allow the Standstill Agreement to become effective May 21, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 8, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-17339 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission[Docket Nos. ER97-2869-000 and ER97-
2872-000]Central Hudson Enterprise
Corporation; and Central Hudson Gas
& Electric Corporation; Order
Conditionally Accepting For Filing
Proposed Market-Based Rates, And
Announcing Policy With Respect To
New Power Sales That Do Not Reflect
Unbundling of Transmission and
Ancillary Services

Issued June 26, 1997.

In this order, we conditionally accept for filing, without hearing or suspension, the proposed market-based power sales rates filed by Central Hudson Gas & Electric Corporation (Central Hudson). In addition, we accept for filing, without conditions, hearing or suspension, the proposed market-based power sales rates filed Central Hudson's power marketer affiliate, Central Hudson Enterprise Corporation (Enterprise).

We also take this opportunity to remind public utilities that all new power sales (*i.e.*, those made on or after July 9, 1996) must separately unbundle transmission and ancillary services. We announce that any power sales filing made after the date this order is published in the Federal Register that does not provide for the unbundling of transmission and ancillary services will be rejected, regardless of whether the sales agreement or tariff is market-based or cost-based.

Background

Central Hudson is a public utility in upstate New York which owns and operates facilities for the generation, transmission and distribution of electric power. Enterprise is a power marketer which is a wholly-owned subsidiary of Central Hudson. Enterprise does not own or operate any electric generation, transmission or distribution facilities and currently has no retail or wholesale electric service customers.

On May 6, 1997, Enterprise and Central Hudson filed separate applications in Docket Nos. ER97-2869-000 and ER97-2872-000 for Commission authorization to engage in the wholesale sale of electric energy and capacity at market-based rates. Among other things, Enterprise and Central Hudson request the same waivers and authorizations afforded to other power marketers and franchised utilities with market-based rate authorization.

Notice of Enterprise's and Central Hudson's filings were published in the **Federal Register**, 62 FR 29,139 (May 29, 1997), with comments, protests and interventions due on or before June 4, 1997. Electric Clearinghouse, Inc. (Electric Clearinghouse) filed a timely motion to intervene in each of the proceedings, raising no substantive issues. The Public Service Commission of the State of New York (New York Commission) filed a notice of intervention in each of the proceedings, raising no substantive issues.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214(c), the timely, unopposed motions to intervene of Electric Clearinghouse and the notices of intervention of the New York Commission serve to make them parties to the proceedings in Docket Nos. ER97-2869-000 and ER97-2872-000.

Market-Based Rates

The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. In order to demonstrate the absence or mitigation of market power, a transmission-owning public utility must have on file with the Commission an open access transmission tariff for the provision of comparable services. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.¹

As we explain below, we find that, with Central Hudson's filing of an open access *pro forma* compliance transmission tariff,² Enterprise's market-based rate application and Central Hudson's market-based rate application, as modified, meet these standards. Accordingly, we will accept the proposed market-based rates for filing, to become effective on the date of this order, subject to the condition that Central Hudson revise its power sales tariff as discussed below.

¹ *E.g.*, Progress Power Marketing, Inc., 76 FERC ¶ 61,155 at 61,919 (1996); Northwest Power Marketing Company, L.L.C., 75 FERC ¶ 61,281 at 61,889 (1996); *accord* Heartland Energy Services, Inc., *et al.*, 68 FERC ¶ 61,223 at 62,060-63 (1994) (*Heartland*).

² See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 FR 12,274 (1997), FERC Stats. & Regs. ¶ 31,048, *reh'g pending* (Open Access Rule).

1. Generation Market Power

In support of their market-based rate applications, Enterprise and Central Hudson have submitted a generation dominance analysis. That analysis indicates that Central Hudson's market share of installed and uncommitted capacity will not exceed levels the Commission previously has found to be acceptable.³

Accordingly, we find that Enterprise and Central Hudson meet the Commission's generation market power standard for approval of market based-rates.

2. Transmission Market Power

When a transmission-owning public utility or its affiliate seeks authorization to charge market-based rates, the Commission has required the public utility to have an open access transmission tariff on file before granting such authorization.⁴ Central Hudson has filed an open access *pro forma* compliance transmission tariff in Docket No. OA96-14-000. Accordingly, we find that Enterprise and Central Hudson have satisfied the Commission's transmission market power standard for approval of market-based rates.

3. Other Barriers to Entry/Reciprocal Dealing

Central Hudson owns and operates a natural gas distribution system and associated pipeline and storage facilities. Should Central Hudson or any of its affiliates deny, delay or require unreasonable terms, conditions, or rates for natural gas service to a potential electric competitor of Central Hudson or Enterprise in bulk power markets, then that electric competitor may file a complaint with the Commission that could result in the suspension of Central Hudson's or Enterprise's authority to sell power at market-based rates.⁵

With this safeguard, we are satisfied with Enterprise's and Central Hudson's explanation that there are no other barriers to entry or reciprocal dealing considerations of concern here.

4. Affiliate Abuse

Enterprise and Central Hudson commit in their power sales tariffs that they will not sell power to or purchase power from each other. In addition, Enterprise and Central Hudson have

submitted a code of conduct (governing, among other things, the pricing of affiliate sales and purchases of non-power goods and services and the exchange of market information) that satisfies the Commission's requirements concerning affiliate abuse.

With these and other safeguards contained in the proposed power sales tariffs and code of conduct, we are satisfied with Enterprise's and Central Hudson's explanation that there are no affiliate abuse considerations of concern here.

Unbundling of Rates

1. Announcement of Policy

Order No. 888 provides (FERC Stats. & Regs. at 31,654) that, as part of the functional unbundling of wholesale services, the prices for wholesale generation, transmission and ancillary services must be separately stated for sales under requirements or coordination contracts executed after July 9, 1996. As discussed below, Central Hudson has failed to satisfy this requirement. It is not, however, the first utility to do so. In fact, this requirement has not been satisfied in several recent cases,⁶ and we have unnecessarily expended resources in preparing Commission orders addressing this deficiency.

As a result, we take this opportunity to notify all public utilities that any future filing of a power sales agreement or tariff, after the date of publication of this order in the Federal Register, that does not provide for unbundling of transmission and ancillary services consistent with the requirements of Order Nos. 888 and 888-A will be rejected by the Director of the office of Electric Power Regulation or his designee.⁷

2. Central Hudson's Filing

Central Hudson's market-based power sales tariff does not address the Commission's unbundling requirements. In addition, the tariff does not address the circumstances under which transmission and ancillary services will be provided under Central Hudson's open access transmission tariff. Accordingly, we will direct Central Hudson to revise its market-based power sales tariff to state explicitly separate prices for generation, transmission and ancillary services. In addition, we will require Central

Hudson to revise its market-based tariff to state that: (1) When transmission and ancillary services to effectuate power sale transactions under Central Hudson's market-based tariff are to be obtained by Central Hudson, Central Hudson must file a service agreement placing itself under its open access transmission tariff; and (2) when the customer itself is obtaining transmission and ancillary services from Central Hudson, Central Hudson must file a service agreement placing the customer under its open access transmission tariff.⁸

Since we are permitting Central Hudson to report prices for short-term market-based transactions (one year or less) in quarterly summaries, as discussed below, the separate prices for the unbundled services in such short-term transactions should be included in those quarterly summaries. For long-term transactions (longer than one year), the separate prices should be included in the service agreements filed for specific transactions.

Waivers, Authorizations and Reporting Requirements

Enterprise has requested the following authorizations and waivers of various Commission regulations consistent with those granted other power marketers: (1) Waiver of the filing requirements of Subparts B and C of Part 35, except sections 35.12(a), 35.13(b), 35.15 and 35.16; (2) waiver of the accounting and other requirements of Parts 41, 101 and 141; (3) abbreviated filings with respect to interlocking directorates under Parts 45 and 46; (4) blanket authorization for issuances of securities or assumptions of liabilities pursuant to FPA section 204, 16 U.S.C. 824c (1994). We will grant Enterprise the requested authorizations and waivers to the extent granted to other power marketers.

Consistent with previous Commission decisions, we will require Enterprise to file quarterly reports detailing the purchase and sale transactions undertaken in the prior quarter. This requirement is necessary to ensure that contracts relating to rates and services are on file as required by section 205(c) of the Federal Power Act (FPA), 16 U.S.C. 824d (1994), and to allow the Commission to evaluate the reasonableness of the charges and to provide for ongoing monitoring of the marketer's ability to exercise market power.⁹

Consistent with procedures we have adopted in other cases, Central Hudson

³ See, e.g., Southwestern Public Service Company, 72 FERC ¶ 61,208 at 61,966-67 (1995), *reh'g pending*; Louisville Gas & Electric Company, 62 FERC ¶ 61,016 at 61,146 (1993).

⁴ See, e.g., Open Access Rule, FERC Stats. & Regs. at 31,656-57; *accord* Southern Company Services, Inc., 71 FERC ¶ 61,392 at 62,536 (1995); *Heartland*, 68 FERC at 62,059-60.

⁵ See, e.g., *LG&E*, 62 FERC at 61,148.

⁶ See *E.G.*, Orange and Rockland Utilities, Inc., 78 FERC ¶ 61,344 (1997); Idaho Power Company, 78 FERC ¶ 61,343 (1997).

⁷ Any power sales filing before that date that does not reflect the unbundling requirement will be made deficient.

⁸ See Public Service Electric & Gas Company, 78 FERC ¶ 61,119 (1997).

⁹ See, e.g., *Heartland*, 68 FERC at 62,065-66.

may file umbrella service agreements for short-term (one year or less) transactions within 30 days of the date of commencement of short-term service, to be followed by quarterly transaction summaries of specific sales. For long-term transactions (longer than one year), Central Hudson must submit the actual individual service agreement for each transaction within 30 days of the date of commencement of service.¹⁰

To ensure the clear identification of filings, and in order to facilitate the orderly maintenance of the Commission's files and public access to the documents, long-term transaction service agreements should not be filed together with short-term transaction summaries.

Additionally, we will direct Enterprise and Central Hudson to inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing. These include, but are not limited to: (1) Ownership of generation or transmission facilities or inputs to electric power production other than fuel supplies; or (2) affiliation with any entity not disclosed in the filings that owns generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area.¹¹ Alternatively, rather than reporting continually, Enterprise and Central Hudson may elect to report such changes every three years in conjunction with an updated market analysis.¹²

The Commission Orders

(A) Central Hudson is hereby directed to revise its market-based power sales tariff, within 15 days of the date of this order, to reflect the revision discussed in the body of this order.

(B) Central Hudson's market-based power sales tariff is hereby conditionally accepted for filing, to become effective on the date of issuance of this order, on the condition that Central Hudson makes the compliance filing directed in Ordering Paragraph (A) above.

(C) Enterprise's market-based power sales tariff is hereby accepted for filing, to become effective on the date of issuance of this order.

(D) Enterprise's request for waiver of Parts 41, 101 and 141 of the Commission's regulations is hereby granted.

(E) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Enterprise should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(F) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, Enterprise is hereby authorized, pursuant to section 204 of the FPA, to issue securities and assume obligations and liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Enterprise, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) Until further order of this Commission, the full requirements of Part 45 of the Commission's regulations, except as noted, are hereby waived with respect to any person now holding or who may hold an otherwise proscribed interlocking directorate involving Enterprise. Any such person instead shall file a sworn application providing the following information:

(1) full name and business address; and

(2) all jurisdictional interlocks, identifying the affected companies and the positions held by that person.

(H) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Enterprise's issuance of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

(I) Enterprise's requests for waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations, with the exception of sections 35.12(a), 35.13(b), 35.15 and 35.16, is hereby granted.

(J) Enterprise and Central Hudson are hereby directed to conform with the

filing and reporting requirements specified in this order. If Enterprise or Central Hudson transacts under its market-based power sales tariff prior to July 1, 1997, the first quarterly report of transactions undertaken by it will be due within 30 days of the calendar quarter ending June 30, 1997. If not, the first quarterly report of transactions will be due within 30 days of the calendar quarter ending September 30, 1997.

(K) Enterprise and Central Hudson are hereby directed to file an updated market analysis within three years of the date of this order, and every three years thereafter.

(L) Enterprise and Central Hudson are hereby directed to inform the Commission promptly of any change in status that would reflect a departure from the characteristics that the Commission has relied upon in approving market-based pricing. Alternatively, as discussed in the body of this order, Enterprise and Central Hudson may elect to report any such changes every three years with the updated market analysis filed pursuant to three years with the updated market analysis filed pursuant to Ordering Paragraph (K) above. Enterprise and Central Hudson shall notify the Commission of which option they elect in the first quarterly report filed pursuant to Ordering Paragraph (J) above.

(M) Enterprise and Central Hudson are hereby informed of the rate schedule designations shown on the Attachment to this order.

(N) The Secretary shall promptly publish a copy of this order in the **Federal Register**.

By the Commission.

Lois D. Cashell,
Secretary.

Attachment

Central Hudson Enterprise Corporation

Docket No. ER97-2869-000

Rate Schedule FERC No. 1

Supplement No. 1 to Rate Schedule No. 1—Code of Conduct

Central Hudson Gas & Electric Corporation

Docket No. ER97-2872-000

FERC Electric Tariff Original Volume No. 3

Supplement No. 1 to FERC Electric Tariff Original Volume No. 3—Code of Conduct [FR Doc. 97-17314 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

¹⁰ See, e.g., Plum Street Energy Marketing, Inc., et al., 76 FERC ¶ 61,319 at 62,556 (1996); Southern Company Services, Inc., 75 FERC ¶ 61,130 at 61,444-45 (1996).

¹¹ See, e.g., Morgan Stanley Capital Group, Inc., 69 FERC ¶ 61,175 at 61,695 (1994), order on reh'g, 72 FERC 61,082 (1995); Intercoast Power Marketing, Inc., 68 FERC ¶ 61,248 at 62,134, Clarified, 68 FERC ¶ 61,324 (1994).

¹² We reserve the right to require such an analysis at any time.

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. 0A97-596-000]****Central Illinois Light Co., QST Energy Trading Inc.; Notice of Filing**

June 26, 1997.

Take notice that on May 13, 1997, QST Energy Trading Inc. (QST Trading) and Central Illinois Light Co. made a revised filing of their Standards of Conduct as required by Order No. 889-A.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 8, 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,*Secretary.*

[FR Doc. 97-17343 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. ER97-2332-000]****Cinergy Service, Inc.; Notice of Filing**

June 26, 1997.

Take notice that on May 16, 1997, Cinergy Services, Inc. tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 7, 1997. Protest will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,*Secretary.*

[FR Doc. 97-17336 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. ER97-2311-000]****Delmarva Power & Light Company; Notice of Filing**

June 12, 1997.

Take notice that on May 23, 1997, Delmarva Power & Light Company tendered for an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 25, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,*Secretary.*

[FR Doc. 97-17335 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. RP97-603-000]****Egan Hub Partners, L.P.; Notice of Application**

June 26, 1997.

Take notice that on June 23, 1997, Egan Hub Partners, L.P. (Egan Hub) 44084 Riverside Parkway, Suite 340, Leesburg, Virginia 20176, filed, in Docket No. CP97-603-000, an

application pursuant to Section 7c of the Natural Gas Act and part 157 of the Federal Energy Regulatory Commission's (Commission) regulations for a certificate of public convenience and necessity authorizing the construction, and operation of additional compressors and related facilities and to increase the capacity of Egan Hub's existing salt dome storage facility located in Acadia Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Egan Hub seeks authorization to increase the total combined operating capacity of its two caverns to approximately 15.5 Bcf and to construct four additional 4,450 horsepower compressors, and appurtenant facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 17, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 18 CFR 285.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

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, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and given.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Egan Hub to appear or be necessary. 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 represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97-17321 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-287-003]

El Paso Natural Gas Company; Notice of Compliance Filing

June 26, 1997.

Take notice that on June 23, 1997, El Paso Natural Gas Company (El Paso) tendered for filing and acceptance by the Federal Energy Regulatory Commission (Commission) the following tariff sheet to its FERC Gas Tariff, Second Revised volume No. 1-A, to become effective May 1, 1997:

Substitute Fifth Revised Sheet No. 30.

El Paso states that the above tariff sheet is being filed to revise the Statement of Negotiated Rates pursuant to the Commission's letter order issued May 23, 1997 in Docket No. RP97-287-001.

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. 97-17332 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-397-000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 26, 1997.

Take notice that on June 23, 1997, El Paso Natural Gas Company (El Paso) tendered for filing and acceptance, pursuant to Subpart C of Part 154 of the Federal Energy Regulatory Commission's (Commission) Regulations Under the Natural Gas Act, the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1-A to become effective August 1, 1997.

Third Revised Sheet No. 210

First Revised Sheet No. 210.01

Second Revised Original Sheet No. 211

Original Sheet No. 211A

El Paso states that the tariff sheets are being tendered to revise the scheduling provisions to permit shippers to submit an intra-day request to the day of gas flow.

El Paso states that copies of the filing were served upon all shippers on El Paso's system and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rule and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-17333 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP97-4-000]

Kansas Small Producer Group; Notice of Petition for Adjustment

June 26, 1997.

Take notice that on June 24, 1997, the Kansas Small Producer Group¹ (Producers) filed a petition for adjustment under Section 502c of the Natural Gas Policy Act of 1978 (NGPA) and Rules 1101-1107 of the Commission's Rules of Practice and Procedure, requesting an adjustment to Producers' potential liability to pay refunds and interest that Producers may be directed to make with respect to gas production between October 4, 1983 and June 28, 1988, owing to Producers' collection of Kansas ad valorem tax reimbursements from gas purchasers that have since been deemed to be in excess of the NGPA's applicable maximum lawful gas prices, all as more fully set forth in the subject petition, which is on file with the Commission and available for public inspection.

This matter evolved out of the Commission's 1974 decision in Opinion No. 699-D, to permit gas producers to recover Kansas ad valorem tax reimbursements from their gas purchasers, the Commission's subsequent decision to allow gas producers to collect Kansas ad valorem tax reimbursements under Section 110 of the NGPA, and Northern Natural Gas Company's 1983 challenge to such collections,² culminating in the decision by the United States Court of Appeals for the District of Columbia Circuit, in *Public Service Company of Colorado v. FERC*, 91 F.3d 1478 (D.C. Cir. 1996), that refunds should be paid with respect to Kansas ad valorem tax reimbursements on production between October 4, 1983 and June 28, 1988, and the Supreme Court's denial of cross-petitions for certiorari, filed in connection with the D.C. Circuit's

¹ The Kansas Small Producer Group includes the following companies and individuals: William Graham, Inc.; William L. Graham, Jr.; Graham Petroleum, Inc.; William L. Graham Revocable Trust; Betty H. Graham Revocable Trust; Graham Co.; Graham Enterprises; March Oil Co.; Graham-Michaelis Corp.; W.A. Michaelis, Jr. Revocable Trust; H.R. Michaelis Revocable Trust; Kansas Petroleum, Inc.; James Tasheff; Mary Tasheff; James Rhude; Rude & Fryberger, Inc.; E.N. Diderich Trust; John W. LeBosquet; H.M. Gillespie; Lester Wilkonson; Arthur O. Wilkonson; The Tress Oil Co.; Dorchester Hugoton, Ltd.; and Ensign Oil & Gas Inc.

² See 48 FR 45287 (October 4, 1983).

decision in *Public Service Company of Colorado v. FERC.*,

Producers assert that the Commission has broad discretion in structuring remedies and in determining whether refunds and/or interest are appropriate where excess payments were made, and that the Commission has the authority to grant relief from refund principal and interest. Producers also assert, for various reasons, that the Commission should grant at least a limited waiver of refund principal, plus a total waiver of the interest otherwise due on refunds, for the 1983 to 1988 period. Producers further assert that the Commission should grant refund relief where the royalty portion of the refunds due is unrecoverable or de minimus, or where the original customers that paid the ad valorem tax reimbursements cannot be located.

Any person desiring to participate in this 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 by July 7, 1997.

Lois D. Cashell,

Secretary.

[FR Doc. 97-17322 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP97-5-000]

Mesa Operating Company; Notice of Petition for Adjustment

June 26, 1997.

Take notice that on June 24, 1997, Mesa Operating Company, 5205 N. O'Connor Blvd., Suite 1400, Irving, Texas 75039 (Mesa), filed a petition for adjustment under Section 502c of the Natural Gas Policy Act of 1978 (NGPA) and Rules 1101-1107 of the Commission's Rules of Practice and Procedure, requesting an adjustment to its potential liability to pay refunds and interest that Mesa may be directed to make with respect to gas production between October 4, 1983 and June 28, 1988, owing to Mesa's collection of Kansas ad valorem tax reimbursements from gas purchasers, reimbursements that have since been deemed to be in excess of the NGPA's applicable maximum lawful gas prices, all as more fully set forth in the subject petition,

which is on file with the Commission and available for public inspection.

This matter evolved out of the Commission's 1974 decision in Opinion No. 699-D, to permit gas producers to recover Kansas ad valorem tax reimbursements from their gas purchasers, the Commission's subsequent decision to allow gas producers to collect Kansas ad valorem tax reimbursements under Section 110 of the NGPA, and Northern Natural Gas Company's 1983 challenge to such collections,¹ culminating in the decision by the United States Court of Appeals for the District of Columbia Circuit, in *Public Service Company of Colorado v. FERC*, 91 F.3d 1478 (D.C. Cir. 1996), that refunds should be paid with respect to Kansas ad valorem tax reimbursements on production between October 4, 1983 and June 28, 1988, and the Supreme Court's denial of cross-petitions for certiorari, filed in connection with the D.C. Circuit's decision in *Public Service Company of Colorado v. FERC*.

Mesa requests a waiver of its obligation to repay: (1) Refunds on Kansas ad valorem taxes for the period from October 1983 to June 1988, that are (a) attributable to nonrecoverable royalties, (b) attributable to non-recoupable Kansas property taxes (based in part on the prior reimbursability of the Kansas ad valorem taxes, and (c) attributable to amounts for which the pipeline cannot locate the prior customer who paid the tax reimbursements; and (2) interest from 1983 to the present, for Kansas ad valorem taxes collected during the October 1983 to June 1988 period. Mesa asserts that the Commission has broad discretion in structuring remedies and in determining whether refunds and/or interest are appropriate where excess payments were made, and that the Commission has the authority to grant relief from refund principal and interest. Mesa also asserts for various reasons, that the Commission should grant at least a limited waiver of refund principal, plus a total waiver of the interest otherwise due on refunds, for the 1983 to 1988 period. Mesa further asserts that the Commission should grant refund relief where the royalty portion of the refunds due is unrecoverable or de minimus, or where the original customers that paid the ad valorem tax reimbursements cannot be located.

Any person desiring to participate in this 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 by July 7, 1997.

Lois D. Cashell,

Secretary.

[FR Doc. 97-17323 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT97-40-000]

Mojave Pipeline Company; Notice of Report of GRI Refunds

June 26, 1997.

Take notice that on June 23, 1997, Mojave Pipeline Company (Mojave) submitted its Report of Gas Research Institute (GRI) Refunds for 1996 pursuant to Subpart F of Part 154 of the Commission's Regulations and ordering paragraph C of the Commission's order issued on February 22, 1995 in Docket No. RP95-124-000.

On May 30, 1997, Mojave received a refund from GRI for overcollections for the calendar year 1996 in the amount of \$255,953.00. On June 6, 1997, Mojave states that it mailed checks to its eligible firm shippers as required by the February 22, 1995 order.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 351.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-17326 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

¹See 48 FR 45287 (October 4, 1983).

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. GT97-39-000]

National Fuel Gas Supply Corporation;
Notice of Refund Report

June 26, 1997.

Take notice that on June 23, 1997, National Fuel Gas Supply Corporation (National Fuel) tendered for filing a refund report pursuant to the Commission's May 3, 1995, order in Gas Research Institute (GRI), Docket No. RP95-124-001.

National Fuel states that on May 20, 1997, National Fuel received its share of the GRI refund totaling \$1,027,578.

National Fuel states that on June 13, 1997, it made the refund to its customers in the form of credits to the invoices. The credits were based on non-discounted GRI demand amounts paid during the year ended December 31, 1996. The amounts refunded by National Fuel resulted from refunds made to National Fuel by the GRI.

National Fuel states that copies of this filing are being served to each affected customer.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,*Secretary.*

[FR Doc. 97-17325 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. RP97-398-000]

National Fuel Gas Supply Corporation;
Notice of Proposed Changes in FERC
Gas Tariff

June 26, 1997.

Take notice on June 24, 1997, National Fuel Gas Supply Corporation (National Fuel) tendered for filing a restated FERC Gas Tariff, Fourth Revised Volume No. 1, to be effective August 1, 1997.

National Fuel states that this filing is being made in compliance with the "Order on Compliance Filing" issued by the Commission on March 26, 1997. The order directed National Fuel to restate its Volume No. 1 tariff.

National Fuel states that it is serving copies of this filing with its firm customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,*Secretary.*

[FR Doc. 97-17334 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. ER97-3329-000]

Northeast Utilities System (The Connecticut Light and Power Company, Holyoke Power and Electric Company, Holyoke Water Power Company, Public Service Company of New Hampshire, Western Massachusetts Electric Company); New England Electric System Operating Companies (Granite State Electric Company, New England Power Company); Commonwealth Energy System Companies (Cambridge Electric Light Company, Canal Electric Company, Commonwealth Electric Company); Central Maine Power Company; Notice of Filing

June 26, 1997.

Take notice that on June 16, 1997, the above-captioned utilities (the Filing Systems) filed materials related to the Restated NEPOOL Agreement entitled Additional Generating Resources Program Terms and Conditions (the Terms and Conditions).

The Filing Systems state that the Terms and Conditions are intended to make additional capacity and energy available in New England should projected 1997 summer capacity shortage conditions materialize. The proposed Terms and Conditions are applicable to the reactivation or modification of certain generating units owned by participants in NEPOOL (Participants) and the sales of electric energy at wholesale from these units to the pool. The arrangements related to the Terms and Conditions also involve a waiver of wheeling charges by certain Participant transmission service providers for transmission over non-pool transmission facilities of energy generated by reactivated or modified generating units.

The Filing Systems state that reactivation of certain generating units could be required as early as June 15, 1997 and request an effective date of June 15, 1997 for the Terms and Conditions. The Filing Systems state that copies of the materials in the filing have been sent to members of the NEPOOL Executive Committee and to the electric utility regulatory commissions and governors of the six New England states.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211

and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 7, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-17340 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-16-002]

Northern Natural Gas Company; Notice of Compliance Filing

June 26, 1997.

Take notice that on June 23, 1997, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed on the filing, with proposed effective dates as listed.

Northern states that the instant filing is made in compliance with the Commission's Order on Compliance Filing issued June 3, 1997 in Docket No. RP97-16-001 addressing Northern's System Balancing Agreement (SBA) surcharge.

Northern states that copies of the filing were served upon Northern's 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, 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. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-17331 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC96-19-003, ER96-1663-003, ER97-2358-000, ER97-2364-000 and ER97-2355-000]

Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company; Notice of Filings

June 26, 1997.

Take notice that on June 23, 1997, the California Independent System Operator Corporation (ISO) and the California Power Exchange Corporation (PX), submitted Reply Comments in Docket Nos. ER96-1663-003 and EC96-19-003. The Reply Comments include numerous modifications and clarifications to the Phase II proposals submitted March 31, 1997 in these proceedings.

In addition, on June 23, 1997, Pacific Gas and electric Company (PG&E) filed an Answer to Comments on Market Power filing in Docket No. ER96-1663-003. PG&E states that it now intends to sell all of its fossil-fired and geothermal generation, which, according to PG&E, represents all of PG&E's generation that will be "on the margin" during the vast majority of hours of PX operations. PG&E proposes to clarify and revise its market power mitigation measures in response to comments made by other parties. PG&E also filed an Answer in the captioned proceedings in which it provides a modification to its filing in Docket No. ER97-2358-000.

Also on June 23, 1997, Southern California Edison Company (Edison) filed its Answer to Motions to Intervene, Protests and Comments in Docket No. ER97-2355-000. In its Answer, Edison states that it agrees to incorporate in its filing certain changes suggested by Intervenors.

Any person desiring to comment with respect to said submittals may file comments with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure, 18 CFR 385. Comments addressing the ISO PX Reply comments must be filed on or before July 8, 1997. All comments addressing the submittals by PG&E and Edison must be filed by July 23, 1997. Parties submitting comments must submit a copy of their filing on a computer diskette, in WordPerfect 6.1 format or in a DOS file in the ASCII format (with 1" margins and 10

characters per inch). The computer file should be labeled (—WP or —.ASC). In addition, the comments must include a one page executive summary containing a clear statement specifying their agreement or disagreement with the proposed modifications and changes.

Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-17313 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT97-42-000]

Pacific Gas Transmission Company; Notice of Refund Report

June 26, 1997.

Take notice that on June 24, 1997, Pacific Gas Transmission Company (PGT) tendered for filing a report on refunds made for calendar year 1996 in accordance with the Commission's Orders of February 22, 1995 (70 FERC ¶ 61,205 (1995)) and May 3, 1995 (71 FERC ¶ 61,131 (1995)) in Gas Research Institute (GRI) Docket Nos. RP95-124-000, *et al.*

PGT asserts these Orders required it to credit eligible firm customers with refunds received from GRI and to file a report with the Commission within 15 days of making such refunds. The refund is allocated to customers based on each customer's pro-rata contributions to PGT's GRI surcharge collections on non-discounted firm transportation during 1996, and has been reflected as credits on customer invoices issued June 12, 1997.

PGT further states a copy of this filing has been served upon its jurisdictional customers and interested state regulatory agencies, as well as the official service list compiled by the Secretary in the above-referenced proceeding.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests

must be filed on or before July 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-17328 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97-594-000]

Pennsylvania Power & Light Company; Notice of Filing

June 26, 1997.

Take notice that on May 13, 1997, Pennsylvania Power & Light Company (PP&L) tendered for filing revisions to its Standards of Conduct (Standards). In these revisions, PP&L has changed its Standards largely to reflect the revisions to the Commission's standards of conduct contained in Order No. 889-A, 62 FR 12,484 (March 14, 1997), FERC Stats. & Regs. ¶ 31,049 (1997).

PP&L requests an effective date for the revisions of May 13, 1997, consistent with the effective date of Order No. 889-A. Copies of this filing were served upon all persons listed on the official service list compiled by the Secretary in docket No. OA97-423-000, the docket in which PP&L filed its original Standards.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before July 8, 1997. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on

file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-17342 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97-604-000]

Southern California Edison Company; Notice of Filing

June 26, 1997.

Take notice that on May 29, 1997, Southern California Edison Company (Edison or Company), tendered for filing its revised Open Access Transmission Tariff (Tariff) in compliance with the Commission's directive in Order No. 888-A, issued on March 4, 1997 in Docket Nos. RM95-8-001 and RM94-7-002. The Tariff supersedes Edison's currently effective open access transmission tariff filed on July 9, 1996, Docket No. OA96-76-000, in compliance with Order No. 888. In addition to the revisions required by Order No. 888-A, Edison has also made the two changes directed by the Commission in its January 29, 1997 order (78 FERC ¶ 61,070) accepting the non-rate terms and conditions of Edison's compliance tariff. Edison requests that the Tariff be made effective May 30, 1997.

Copies of this filing were served upon the Public Utilities Commission of the State of California, entities which have received transmission service from the Company since the Commission issued its Open Access NOPR in 1995, and those persons whose names appear on the official service list in Docket No. OA96-76-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 8, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on

file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-17344 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ97-12-000]

Southern Minnesota Municipal Power Agency; Notice of Filing

June 26, 1997.

Take notice that on May 7, 1997, Southern Minnesota Municipal Power Agency tendered for filing a Petition for Declaratory Order.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 7, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-17341 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97-597-000]

Texas Gas Transmission Corporation; Notice of Request under Blanket Authorization

June 16, 1997.

Take notice that on June 20, 1997, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP97-597-000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 18 CFR 157.211) for authorization to construct and

operate a delivery point for Natural Gas of Kentucky, Incorporated (NGKY), located in Logan County, Kentucky, under Texas Gas' blanket certificate issued in Docket No. CP82-407-000, pursuant to Section 7c of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas proposes to install, operate, maintain, and own a 3-inch skid-mounted meter station, electronic flow measurement, telemetry, remote flow control, and related facilities on a site to be acquired by NGKY. Texas Gas states this proposed delivery point will be known as the NGKY-Russellville Delivery Point and will be located on the Texas Gas Russellville-Bowling Green 8-Inch Line in Logan County, Kentucky.

NGKY declares it will install, operate, maintain, and own, at its sole expense, 18,000 feet of 4-inch pipeline connecting to Texas Gas. Texas Gas states NGKY will reimburse them in full for the cost of the facilities to be installed by Texas Gas, which cost is estimated to be \$88,600.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97-17320 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT 97-35-000]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

June 26, 1997.

Take notice that on June 24, 1997, Transcontinental Gas Pipe Line

Corporation (Transco) tendered for filing a refund report pursuant to Ordering Paragraph (C) of the Commission's February 22, 1995, order in Gas Research Institute (GRI), Docket No. RP95-124-000.

Transco states that on May 30, 1997, Transco received its share of the GRI refund totaling \$5,053,817.

Transco states that on June 13, 1997, refunded amounts to eligible shippers via Mail or wire transfer based on non-discounted GRI demand amounts paid during the year ended December 31, 1996. The amounts refunded by Transco resulted from refunds made to Transco by the Gas Research Institute (GRI).

Transco states that copies of this filing are being served to each affected customer.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-17324 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232-336]

Duke Power Company; Notice of Availability of Environmental Assessment

June 26, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed an application for non-project use of project lands and waters. Duke Power Company proposes to permit the Town of Davidson to excavate Davidson Pond, a small

embayment of Lake Norman, the project reservoir. The Town of Davidson requests permission to remove about 14,000 cubic yards of material to re-establish the shoreline and pond bottom to its original size, shape, and depth. In the EA, staff concludes that approval of the licensee's proposal would not constitute a major Federal action significantly affecting the quality of the human environment. The pond is located within the Catawba-Wateree Project in the Town of Davidson, Mecklenburg County, North Carolina.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA are available for review at the Commission's Reference and Information Center, Room 2-A, 888 First Street, N.E., Washington, D.C. 20426. Additional information can be obtained by calling the project manager, Brian Romanek at (202) 219-3076.

Lois D. Cashell,

Secretary.

[FR Doc. 97-17329 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10856-002]

Upper Peninsula Power Company; Notice of Availability of Environmental Assessment

June 26, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for an original license for the Au Train Hydroelectric Project, located on the Au Train River, in Alger County, Michigan; and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 2-A, of the Commission's offices at 888 First Street N.E., Washington, D.C. 20426. For further information,

please contact Frank Karwoski at (202) 219-2782.

Lois D. Cashell,

Secretary.

[FR Doc. 97-17330 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5852-1]

Agency Information Collection Activities; Proposed Collection; Comment Request; Cooperative Agreements and Superfund State Contracts for Superfund Response Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Cooperative Agreements and Superfund State Contracts for Superfund Response Actions (EPA ICR No. 1487.06, OMB Control No. 2010-0020). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below.

DATES: Comments must be submitted on or before September 2, 1997.

ADDRESSES: Office of Grants and Debarment, 401 M Street, SW, Washington, DC 20460, Mailstop 3903F.

FOR FURTHER INFORMATION CONTACT: Remit comments to William G. Hedling, (202) 260-8269/Fax: (202) 401-2350; E-mail: hedling.william@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which apply for EPA assistance under EPA's Superfund Rule (40 CFR part 35, subpart O).

Title: Cooperative Agreements and Superfund State Contracts EPA ICR No. 1487.06, OMB Control No. 2010-0020, Expiration 02/28/98.

Abstract: This is a request for a renewal of an existing Information Collection Request (ICR) due to expire on 2/28/98. This ICR authorizes the collection of information under EPA's Superfund Rule (40 CFR, part 35, subpart O) that establishes the administrative requirements for the Comprehensive Environmental

Response, Compensation and Liability Act (CERCLA)—funded cooperative agreements for State, local and Federally recognized Indian tribal government response actions. The regulation also codifies the administrative requirements for Superfund State Contracts for non-State lead remedial responses. This regulation includes only those provisions as mandated by CERCLA, required by OMB Circulars, or added by EPA to ensure sound and effective financial assistance management. This SF-83 includes all of these requirements under OMB Control Number 2010-0020. The information required by this regulation will be used by EPA award officials to make assistance awards, to approve payments, and to verify that the recipient is using Federal funds appropriately to comply with OMB Circulars and in meeting the cost recovery provisions of CERCLA. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual burden for this collection is estimated to average 10 hours per response. The estimated annual number of respondents is approximately 500. Therefore, the estimated total burden hours on respondents: $(10 \times 500) = 5,000$. The frequency of collection: As required. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and

maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. Send comments regarding these matters, or any other aspect of information collection, including suggestions for reducing the burden, to the address listed above.

Dated: June 26, 1997.

Gary M. Katz,

Director, Grants Administration Division.

[FR Doc. 97-17374 Filed 7-1-97; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5852-4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Combined Sewer Overflow Control Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) renewal has been forwarded to the Office of Management and Budget (OMB) for review and approval: Information Collection Request for the Combined Sewer Overflow Control Policy (OMB Control Number 2040-0170; EPA ICR Number 1680.02; Expiration Date: August 31, 1997). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 1, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260-2740, and refer to EPA ICR No. 1680.02.

SUPPLEMENTARY INFORMATION:

Title: Information Collection Request for the Combined Sewer Overflow Control Policy (OMB Control Number 2040-0170; EPA ICR Number 1680.02). This is a request for an extension of a currently approved information collection that expires on June 30, 1997.

Abstract: The information to be collected under this request is the

information recommended in the CSO control policy that will be developed by municipalities with combined sewer overflows (CSOs). Specifically, the information is the documentation that the municipalities have implemented the nine minimum controls specified in the CSO policy, the long-term control plan that the municipalities must develop and implement to achieve compliance with the requirements of the Clean Water Act and applicable State water quality standards (WQS), and compliance monitoring data for demonstrating compliance with applicable WQS and National Pollutant Discharge Elimination System (NPDES) permit conditions. The first two information submittals are one-time submittals; the last element will be submitted semi-annually as part of the municipalities' Discharge Monitoring Reports (DMRs). EPA will use this information to determine how well the CSO control policy is being implemented at the State and local level and to prepare the performance reports required under the Government Performance and Results Act (GPRA). Under the GPRA, EPA selected the CSO Control Program as a pilot program for FY 1997 and FY 1998. As such, EPA developed a FY 1997 Performance Plan that includes performance goals and associated performance measures for determining how well the program is achieving these goals. The information to be collected under this information collection is necessary to determine the program's achievement of the performance measures. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on February 25, 1997 (62 FR 8445). No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 680 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and

maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Municipalities with combined sewer overflow systems that have combined sewer overflows (CSOs).

Estimated Number of Respondents: 980.

Frequency of Response: One time for selected items and semi-annually for other items.

Estimated Total Annual Hour Burden: 622,777.

Estimated Total Annualized Cost Burden: \$73,900.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, to the following addresses. Please refer to EPA ICR No. 1680.02 and OMB Control No. 2040-0170 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460 and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: June 26, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97-17371 Filed 7-1-97; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5851-9]

Environmental Statistics Subcommittee of the National Advisory Council for Policy and Technology; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Cancellation of notice of public meeting.

SUMMARY: This is a cancellation notice for the July 22, 1997, Environmental Statistics Subcommittee (of the Environmental Information, Economics and Technology Committee) of the

National Advisory Council on Environmental Policy and Technology (NACEPT) meeting.

The Environmental Statistics Subcommittee was formed to provide key recommendations and strategic advice on the statistical products and activities necessary to enhance the Agency's knowledge about environmental statistics and trends, and to explore information gaps from the perspective of the users/products of these data products. The meeting was being held to discuss and offer critical advice on initiatives of the Office of Strategic Planning and Environmental Data.

DATES: The public meeting was to be held on July 22, 1997, from 9 a.m. to 5 p.m. The meeting was to be held at Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW, 2nd Floor Renoir Conference Room, Washington, DC 20024. This meeting was open to the public.

ADDRESSES: Written comments should be sent to: N. Phillip Ross, Office of Strategic Planning and Environmental Data, U.S. Environmental Protection Agency, Mail Code 2161, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: N. Phillip Ross, Designated Federal Official, Direct Line (202) 260-0250, General Line (202) 260-5244; FAX (202) 260-8550.

N. Phillip Ross,

Designated Federal Official.

[FR Doc. 97-17373 Filed 7-1-97; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[PF-740; FRL-5722-9]

Notice of Filing and Withdrawal 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, as well as the withdrawal of a pesticide petition.

DATES: Comments, identified by the docket control number PF-740, must be received on or before August 1, 1997.

ADDRESSES: By mail submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7505C), Office of Pesticides Programs, Environmental

Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be

claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked

confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
James Tompkins, (PM 25).	Rm. 237, CM #2, 703-305-7740; e-mail: Tompkins.James@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA Do. Do.
Mary L. Waller, (PM 21)	Rm. 265, 703 308-9354; e-mail: waller.mary@epamail.epa.gov.	
George LaRocca (PM 13).	Rm. 204, 703-305-5540, e-mail: LaRocca.george@epamail.epa.gov.	

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment, amendment and/or withdrawal of regulations for residues of certain pesticide chemicals in or on various raw food commodities under section 408 of the Federal Food, Drug, and Cosmetic 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, as well as the public version, has been established for this notice of filing under document control number PF-740 (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".

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 document control number (insert docket number) and appropriate

petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

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

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 23, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Below summaries of the pesticide petitions are printed. The summaries of the petitions were prepared by the petitioners. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Bayer Corporation Withdrawal Of Pesticide Petition

PP 6E3182

On November 8, 1984 Bayer Corporation, P.O. Box 4913, Kansas City, MO 64120, filed an import petition on behalf of the Ministry of Agriculture, Fisheries and Forestry in Japan, requesting establishment of a permanent tolerance (0.1 ppm) for the insecticide prothiophos (Tokuthion) in/on Japanese sand pears being imported from Japan. On March 27, 1997 Bayer notified EPA that it requests that the petition be withdrawn without prejudice to future filing. The Agency has withdrawn the subject petition. (PM 13).

2. Merck Research Laboratories, Inc.

PP 6F4628

EPA has received pesticide petition 6F4628 from Merck Research Laboratories, Inc., P.O. Box 450, Hillsborough Road, Three Bridges, NJ 08887-0450, proposing pursuant to section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. section 346a (d), to amend 40 CFR part 180 by establishing tolerances for residues of the insecticide Emamectin Benzoate, 4'-epi-methylamino-4'-deoxyavermectin B1 benzoate [a mixture of a minimum of 90% 4'-epi-methylamino-4'-deoxyavermectin B1a and a maximum of 10% 4'-epi-methylamino-4'-deoxyavermectin B1b benzoate] and it degrades (with Merck research numbers in parentheses) 8,9-isomer of the B1a and of the B1b component of the parent insecticide (C-695,638); 4'-deoxy-4'-epi-amino-avermectin B1 (L-653,64); 4'-deoxy-4'-epi-(N-formyl-N-methyl)amino-avermectin B1 (L-660,599); and 4'-deoxy-4'-epi(N-formyl)amino-avermectin B1 (L-657,831) in or on the raw agricultural commodities cole crops vegetables (cabbage, broccoli, cauliflower and brussels sprouts) at 0.025 parts per million (ppm) and leafy vegetables (celery and head lettuce) at 0.025 ppm. The proposed analytical method is high performance liquid chromatography (HPLC).

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of emamectin benzoate in plants has been studied in lettuce, cabbage, and sweet corn. The major portion of the residue is parent compound and its delta 8,9-photoisomer. Studies of the metabolism of emamectin in animals are not required because the commodities

that are the subject of the petition are not significant animal feed items.

2. *Analytical method.* Adequate analytical method (HPLC-fluorescence methods) are available for enforcement purposes.

3. *Magnitude of residues.* Eighteen field trials have been conducted: 10 on cabbage, 4 on broccoli, and 4 on cauliflower. These trials were conducted in the major U.S. growing areas for these crops. In samples taken after passage of the proposed interval between last treatment and harvest, the highest combined residue of emamectin benzoate and the degradates, which occurred in one cabbage sample, was 0.020 ppm (actually quantified) of the main component, an unquantifiable amount that could be almost as high as the 0.005 limit of quantification or as low as the 0.001 ppm limit of detection, and undetectable amounts of the other two components, for a total somewhere between 0.021 part per million (ppm) and 0.027 ppm (total of actually quantified residues plus maximum possible levels of detectable but nonquantifiable residues between 0.001 and 0.005 ppm). In all other samples taken the combined measurable and nonquantifiable residues were well below the 0.025 ppm level.

B. Toxicological Profile

The primary toxic effect seen in animal studies of emamectin benzoate is neurotoxicity. No-observed-effect-levels (NOELs) for this effect have been well-characterized in multiple studies. Emamectin benzoate has not been shown to be oncogenic or teratogenic in animal studies, it lacks mutagenic activity, and it is not selectively developmentally toxic. The petition refers to toxicity data that establish the following information about the toxicity of emamectin benzoate:

1. *Acute toxicity.* Acute oral LD₅₀: rat, 76–89 mg/kg; CD-1 mouse 107–120 mg/kg; CF-1 mouse, 22–31 mg/kg. Acute oral neurotoxicity: rat, No observed effect level (NOEL) = 5 mg/kg. Lowest observed effect level (LOEL) = 10 mg/kg. Acute dermal LD₅₀: rat and rabbit, >2,000 mg/kg. Dermal irritation: rabbit, not irritating to skin. Eye irritation: rabbit, severe eye irritant. Acute inhalation 4-hour LC₅₀: rat, 2.12–4.44 mg/l.

2. *Reproductive/developmental toxicity.* Developmental toxicity: rat, maternal NOEL = 2 mg/kg/day, developmental NOEL = 4 mg/kg/day, developmental LOEL = maternally toxic 8 mg/kg/day (HDT) for developmental delay; rabbit, maternal NOEL = 3 mg/kg/day, developmental NOEL = 6 mg/kg/day (maternally toxic HDT).

Developmental neurotoxicity: rat, maternal NOEL = 3.6/2.5 mg/kg/day (HDT), developmental NOEL = 0.6 mg/kg/day, developmental LOEL = 3.6/2.5 mg/kg/day for signs of neurotoxicity in pups. Two-generation reproductive toxicity: rat, parental and reproductive NOEL = 0.6 mg/kg/day, parental LOEL = 3.6/1.8 mg/kg/day (for decreased weight gain and neuronal lesions); reproductive toxicity LOEL = 3.6/1.8 mg/kg/day (for decreased fecundity and signs of neurotoxicity in pups).

3. *Subchronic And chronic toxicity and oncogenicity.* With the single exception of the chronic rat study, LOELs for the following studies are based on clinical signs and/or histopathological evidence of neurotoxicity (described further below). Subchronic (90-day) toxicity: rat, NOEL = 0.5 mg/kg/day, LOEL = 2.5 mg/kg/day; CD-1 mouse, NOEL = 5.4 mg/kg/day (TWA), LOEL = 0.5 mg/kg/day; dog, NOEL = 0.25 mg/kg/day, LOEL = 0.5 mg/kg/day Subchronic (90-day) neurotoxicity: rat, NOEL = 1 mg/kg/day, LOEL = 5 mg/kg/day. Chronic (105-week) toxicity/oncogenicity, rat: NOEL = 0.25 mg/kg/day, LOEL = 1 mg/kg/day (based on decreased body weight and clinical chemistry changes), neurotoxicity NOEL = 1 mg/kg/day, not oncogenic. Chronic (79-week) toxicity/oncogenicity, CD-1 mouse: NOEL = 2.5 mg/kg/day, LOEL = 5 mg/kg (males), 7.5 mg/kg/day (females), not oncogenic. Chronic (53-week) toxicity, dog: NOEL = 0.25 mg/kg/day, LOEL = 0.5 mg/kg/day.

Exposure to sufficiently high doses of emamectin benzoate may be associated with clinical signs of central nervous system (CNS) toxicity and microscopic evidence of CNS/peripheral nervous system (PNS) damage. Neurotoxicity has generally been the most sensitive endpoint for toxicity in oral animal studies with emamectin benzoate. Clinical signs of CNS toxicity resulting from emamectin benzoate exposure include tremors, mydriasis, and changes in motor activity (e.g., lethargy, hyperactivity, and/or ataxia). Nervous system lesions (generally focal and of a low degree of severity) have been observed microscopically in white and gray matter in the brain stem, spinal cord, and peripheral nerves. Sporadic lesions of the optic nerve and/or retina have also been seen at higher dose levels. NOELs have been determined in all studies. The lowest toxic dose level of emamectin benzoate for CNS/PNS lesions (0.5 mg/kg/day) was identified in a 1-year study in dogs (NOEL of 0.25 mg/kg/day).

The CF-1 mouse is uniquely sensitive to emamectin benzoate-induced neurotoxicity. Studies have shown that

a significant fraction of the members of this strain inherit an inability to produce a P-glycoprotein one that most strains and species do produce that functions to resist the entrance of avermectin-type compounds into the central nervous system. P-glycoprotein is also present in the gut of most species and limits absorption of avermectin-type compounds following oral exposure. In a 16-day feeding study in the CF-1 mouse, tremors were seen at 0.3 mg/kg/day of emamectin benzoate with a NOEL of 0.1 mg/kg/day. No histopathologic evidence of neurotoxicity was seen in this study up to the highest dose tested (0.9 mg/kg/day).

Emamectin benzoate photodegrades on plants and in soil. The major photodegradates that are not animal metabolites were tested in a 15-day neurotoxicity study in CF-1 mice. Only one photodegrade showed neurotoxicity (Merck research number L-660,599, the *N*-formyl-*N*-methyl degradate). Its NOEL was found to be 0.075 mg/kg/day, slightly lower than the value for the parent compound in the same kind of study, and both clinical signs and peripheral nerve lesions were observed at levels of 0.1 mg/kg/day and higher.

4. *Mutagenicity.* Emamectin benzoate was tested in a battery of *in vitro* and *in vivo* mutagenicity assays and showed no evidence of mutagenic potential. The photodegradates have also been tested in the Ames bacterial mutagenicity assay and show no mutagenic potential in this test system.

5. *Endpoint selection.* Merck is proposing that the 0.075 mg/kg/day NOEL from the CF-1 mouse 15-day neurotoxicity study with the L-660,599 photodegrade be used as the basis for acute dietary risk assessment. For evaluation of chronic dietary risks, Merck is proposing that the one-year dog chronic study NOEL of 0.25 mg/kg/day be used. The dog appears to be the most sensitive species to long-term exposure to emamectin benzoate. Accordingly, chronic exposure is compared against a RfD of 0.0025 mg/kg/day, based on the dog study results and an uncertainty factor of 100.

C. Aggregate Exposure

1. *Dietary exposure.* Except for a temporary tolerance associated with an experimental use permit, no tolerances for residues of emamectin benzoate have been established. Merck projects that by the year 2001, emamectin benzoate will be used on approximately 17% of the acreage for the six crops covered by this petition. Chronic dietary exposure analyses were conducted for the overall

U.S. population and 26 population subgroups. Assuming 100% of the crop treated, chronic exposure for the overall U.S. population was estimated to be 0.000003 mg/kg BW/day, and for the most highly exposed subgroup, nursing females 13 years and older, 0.000004 mg/kg BW/day.

2. *Nondietary exposure.* No products containing emamectin benzoate have yet been registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for any food or nonfood use. The environmental fate of emamectin has been evaluated, and the compound is not expected to contaminate groundwater or surface water to any measurable extent. No significant nondietary, nonoccupational exposure is anticipated.

D. Cumulative Effects

Emamectin is a member of the avermectin family of natural and synthetic compounds that includes the Merck products abamectin (a naturally occurring compound that is the active ingredient of several insecticides registered under FIFRA) and ivermectin (a human and animal drug made from abamectin). Emamectin is made from abamectin but is less similar to abamectin than is ivermectin. Other companies produce certain other drugs that are members of the avermectin family. Some of the effects seen in toxicity studies of abamectin and ivermectin are similar to some of the effects seen in toxicity studies of emamectin. See the discussion of abamectin and ivermectin in 61 FR 65043 (Dec. 10, 1996). Merck is not aware of any information indicating what, if any, cumulative effect would result from exposure to two or more of these compounds.

E. Safety Determination

1. *U.S. population chronic risk.* Chronic exposures were analyzed with reference to the chronic effects referenced dose (RfD) NOEL of 0.0025 mg/kg/day. Assuming 100% of the crop treated, the chronic exposure estimate was 0.1% of the RfD for the overall U.S. population, and 0.2% of the RfD for the most highly exposed subgroup, nursing females 13 years and older. If 25% crop treatment is assumed, exposure estimates were less than 0.1% of the RfD for all population groups.

2. *U.S. population acute risk.* Acute dietary exposures were analyzed for the overall U.S. population, and the population subgroups (1) women 13 years and older, (2) infants, and (3) children. In addition, Tier 2 and Tier 3 acute analyses were conducted assessing acute exposures against the

0.075 mg/kg/day NOEL. These analyses showed that the margins of exposure (MOEs) calculated from the proposed uses of emamectin benzoate are acceptable whether using a highly conservative approach (Tier 2) or a more realistic (Tier 3) methodology. In the Tier 2 analysis, MOEs were well over 1,000 up to the 95th percentile of exposure for all population groups. In the Tier 3 analysis and assuming 100% of the crop treated, MOEs up to the 99th percentile of exposure were greater than 1,000. Assuming 25% of the crop treated, MOEs were greater than 1,000 up to the 99.9th percentile of exposure. Results of both the chronic and acute dietary exposure analyses clearly demonstrate a reasonable certainty that no harm will result from the use of emamectin benzoate.

3. *Infants and children.* It is Merck's position that the administration of emamectin benzoate has not been shown to cause developmental or reproductive effects at dose levels below those that are maternally toxic. Even if it were decided to use the 0.6 mg/kg NOEL from the rat developmental neurotoxicity study as an endpoint from which to calculate an RfD, the resulting RfD would not yield a different regulatory outcome unless a very high additional uncertainty factor were also employed. Use of such an extra uncertainty factor is not justified for several reasons. Emamectin benzoate is not a teratogen. In developmental toxicity testing, the compound caused no developmental effects in rabbits; in rats, it caused no malformations, and caused skeletal effects typical of developmental delay only at severely maternally toxic doses. Likewise, no reproductive toxicity or toxicity to pups was seen in the two-generation reproductive toxicity study except at parentally toxic doses. In the developmental neurotoxicity study, tremors, hind-leg splay, and behavioral effects were seen in pups at a dose level (3.6/2.5 mg/kg/day) at which no maternal clinical signs were noted. However, the dams in the study were discarded after the lactation period without gross necropsy or microscopic examination. In studies in which rats dosed at similar levels were examined microscopically, effects (central and peripheral neural lesions) were seen.

The clinical signs of avermectin-family neurotoxicity seen in neonatal rats are unlikely to be useful predictors of human risk. Young rats are considerably more sensitive to avermectin-type compounds than either adult rats or humans and other primates. (In neonatal rats, unlike humans, the P-glycoprotein levels are

only a small fraction of the levels seen in adult rats.) Moreover, data from clinical experience with ivermectin, a related human drug, and studies on ivermectin and abamectin, a related pesticide, demonstrate that both the neonatal rat and the CF-1 mouse overpredict the toxicity of the avermectin-type compounds to humans and to non-human primates.

F. International Tolerances

No Codex maximum residue levels (MRLs) have been established for residues of emamectin benzoate. (PM 13)

3. Novartis Crop Protection Inc.

PP 0E3875

EPA has received a pesticide petition (0E3875) from Novartis Crop Protection Inc., PO Box 18300, Greensboro, NC 27419. The petition proposes, to amend 40 CFR part 180, by establishing a permanent import tolerance for the residues of the fungicide cyproconazole, (2*RS*,3*RS*)-2-(4-chlorophenyl)-3-cyclopropyl-1-*H*-1,2,4-triazole-1-yl)butan-2-ol, (CAS #94361-06-5; PC Code 128993) in or on the raw agricultural commodity coffee beans at 0.1 part per million (ppm). The time-limited tolerance of 0.1 ppm in or on coffee beans established in the **Federal Register** of September 27, 1995 (60 FR 49795) will expire July 1, 1997.

A. Chemical Uses

Cyproconazole, (2*RS*,3*RS*)-2-(4-chlorophenyl)-3-cyclopropyl-1-(1*H*-1,2,4-triazole-1-yl)butan-2-ol, is a broad spectrum fungicide that has been classified as an ergosterol-biosynthesis inhibitor. It is used to control a variety of fungi, including coffee rust, in several coffee producing countries. Rates range from a preventative treatment of 20 g ai/ha to a maximum curative treatment of 50 g ai/ha with a 30 day pre-harvest interval (PHI) and annual maximum of 100 g ai/ha.

1. *Cyproconazole safety.* A battery of acute toxicity studies was conducted placing technical cyproconazole in Toxicity Category III and IV.

i. *90-day rat study.* A NOEL for this study was not attained, but the NOEL is estimated to be less than 1.0 mg/kg.

ii. *13-week feeding study in dogs.* NOEL of 20 ppm (0.8 mg/kg/day) and an LEL of 100 ppm (4 mg/kg/day) based on included slack muscle tone, depressed body weight gain, and decreases in bilirubin, total cholesterol, HDL-cholesterol, triglycerides, total protein, and albumin. There were increases in platelet counts, alkaline phosphatase, gamma glutamyl transferase, absolute

and relative liver weights, relative kidney weights, and relative brain weights. Liver toxicity was indicated by hepatomegaly.

iii. *21-day dermal study.* NOEL was 250 mg/kg and the LEL was 1,250 mg/kg. Effects included depressed body weight gain and food consumption and increased levels of AST, creatinine, and cholesterol.

iv. *1-year dog study.* NOEL of 30 ppm (1.0 mg/kg/day) and an LEL of 100 ppm (3.2 mg/kg/day) based on laminal eosinophilic intrahepatocytic bodies observed in all males and two females at the high dose, and in one male at the mid-level dose.

v. *A mouse carcinogenicity study.* NOEL for systemic toxicity of 15 ppm (1.8 mg/kg for males and 2.6 mg/kg for females). The LEL was 100 ppm (13.2 mg/kg for males and 17.7 mg/kg for females) based on a significantly increased incidence of hepatic single cell necrosis and diffuse hepatocytic hypertrophy at the two highest levels.

vi. *A rat chronic/carcinogenicity study.* The NOEL for systemic toxicity was 50 ppm. The LEL was 350 ppm based on slightly decreased body weights in the high-dose females and increased incidence of fatty infiltration of the liver in the high-dose males.

vii. *A rat developmental toxicity study.* NOEL for maternal toxicity was 6 mg/kg, and the LEL was 12 mg/kg based on decreased body weight gain during dosing. The NOEL for developmental toxicity was 6 mg/kg. The LEL was 12 mg/kg based on the increased incidence of supernumerary ribs.

viii. *A chinchilla rabbit developmental toxicity study.* NOEL for maternal toxicity was 10 mg/kg (equivocal). The LEL was 50 mg/kg based on decreased body weight gain during dosing. Developmental effects were also evaluated. Hydrocephalus internus was observed in 1 fetus at each treatment level. Therefore, the NOEL for developmental toxicity was set at less than 2 mg/kg, and the LEL was 2 mg/kg.

ix. *A New Zealand white rabbit developmental toxicity study.* NOEL for maternal toxicity was 10 mg/kg, and the LEL was 50 mg/kg based on decreased body weight gain. There was also evidence of developmental toxicity. The NOEL for developmental toxicity was 2 mg/kg, and the LEL was 10 mg/kg based on the increased incidence of malformed fetuses and litters with malformed fetuses.

x. *A rat two-generation reproduction study.* systemic NOEL for parental toxicity was set at 20 ppm (1.7 mg/kg) based on liver effects at 10.6 mg/kg/day. For reproductive toxicity, the NOEL was

set at 4 ppm (0.4 mg/kg) and the LEL at 20 ppm (1.7 mg/kg) based on increased gestation length in the F0 dams and decreased F1 litter sizes.

xi. *Several mutagenicity studies.* Mutagenicity potential of cyproconazole was tested in several studies considered acceptable by the Agency. Since the results of two chromosomal aberration assays indicated the cyproconazole is clastogenic, additional mutagenicity data were requested to address an identified heritable risk concern. For the potential to induce chromosome aberrations in CHO cells, cyproconazole was positive under non-activated and activated conditions, thus supporting the evidence that cyproconazole is clastogenic in this test system. However, cyproconazole was negative in Salmonella, mouse micronucleus, and SHE/cell transformation assays. A dominant-lethal assay in rats was submitted and was negative. Based on this evidence, the concern for a possible heritable effect was not pursued.

xii. *Metabolism/pharmacokinetics studies.* Cyproconazole was shown to be extensively metabolized in the rat. Unchanged cyproconazole and 13 metabolites were isolated and identified, and 35 metabolites were detected in the excreta. Excretion was relatively rapid with the majority of the radioactivity appearing in the feces as a result of biliary elimination. Residues were found in renal fat, adrenals, kidney and liver, although no significant tissue radioactivity was observed at 168 hours post-dose.

2. *Threshold effects.*—i. *Chronic effects.* Based on available chronic toxicity data, EPA has set the reference dose (RfD) used in the dietary exposure analysis at 0.01 mg/kg bwt/day. This RfD is based on a NOEL of 30.0 ppm (1.00 mg/kg bwt/day) from a 1-year dog feeding study and an uncertainty factor of 100 to account for interspecies extrapolation and intraspecies variability.

ii. *Acute effects.* The risk from acute dietary exposure to cyproconazole is considered by Novartis to be very low. The lowest NOEL in a short term exposure scenario, identified as 2 mg/kg in the rabbit teratology study, is 2-fold higher than the chronic NOEL (see above). Since chronic exposure assessment (see below), based on some worst-case assumptions, resulted in margins of exposure in the thousands for even the most impacted population subgroup, Novartis believes that the margin of exposure for acute exposure would be much higher than one hundred for any population groups; margins of exposure of 100 or more are considered satisfactory by the Agency.

3. *Non-threshold effects.* The HED Carcinogenicity Peer Review Committee has classified cyproconazole as a Group "B2" carcinogen (probable human carcinogen) based on findings of liver tumors in both sexes of mice administered adequate doses of cyproconazole, its possible clastogenic activity, tumors in rats and mice administered structurally related analogues and the lack of an adequate rat carcinogenicity study. The committee assigned cyproconazole a risk characterization value, Q1*, of 3.0×10^{-1} (mg/kg/day)-1 derived from liver tumor data obtained in male mice.

B. Aggregate Exposure

The anticipated residue contributions (ARC) as percentages of the RfD are <0.1% for the general population and all sub-populations and geographic regions. The chronic dietary exposure analysis for cyproconazole is calculated using anticipated residues for coffee and 100% treatment of all crops. This estimate is not a worst-case estimate of dietary exposure but still exaggerates exposure. Based on this calculation, Novartis believes the chronic dietary risk from the recommended use is far below the level which would trigger a concern.

Other potential sources for exposure are drinking water and non-occupational exposure. No cyproconazole-based products are labeled for residential use. Non-occupational exposure for cyproconazole has not been estimated since the current registrations for cyproconazole-based products are limited to commercial and agricultural turf treatment. Field studies have demonstrated that cyproconazole does not leach to groundwater or accumulate in the soil. The average half life of cyproconazole in field dissipation studies was <50 days. The field characteristics of cyproconazole, combined with its use pattern, make surface water contamination unlikely. Thus, Novartis believes the potential for non-occupational and drinking water exposure to the general population is insignificant.

C. Safety Determination

1. *U.S. population.* All non-occupational exposure of cyproconazole in the U.S. is due to its use in the production of imported coffee beans. The anticipated residue contribution (ARC) is 0.000001 mg/kg/day for the general population and, 0.000002 mg/kg/day for females, 20 years old and older. Novartis has calculated that the ARC will consume 0.01% and 0.02% of the RfD for the general population and

females 20 years old or older, respectively. Lifetime carcinogenic risk for dietary exposure based on quantitative risk assessment and a Q_1^* of 3.0×10^{-1} (mg/kg/day)⁻¹, is 3.15×10^{-7} . EPA generally has no concern for exposures below 100 percent of the RfD or lifetime carcinogenic risks less than 1×10^{-6} . Therefore, Novartis concludes that there is a reasonable certainty that no harm will result from aggregate exposure to cyproconazole residues via the use on coffee beans.

The consideration of a common mechanism of toxicity is not appropriate at this time because Novartis and EPA do not have information to indicate that toxic effects produced by cyproconazole would be cumulative with those of any other chemical compounds.

2. *Infants and children.* For dietary risk assessments, no exposure is apportioned to infants and children because they do not normally consume coffee. There is also no non-occupational exposure to infants and children. Based on the completeness and reliability of the toxicity data and the practical non-exposure to cyproconazole, Novartis concludes that there is a reasonable certainty that no harm will result to infants and children from the aggregate exposure of residues of cyproconazole including all anticipated dietary exposure and all other non-occupational exposures.

D. Estrogenic Effects

Cyproconazole does not belong to a class of chemicals known for having adverse effects on the endocrine system. No estrogenic effects have been observed in the various short and long term studies conducted with various mammalian species.

E. Chemical Residue

The nature of the residue in coffee is fully understood. A metabolism study in coffee, using triazole-labeled cyproconazole, was submitted and was acceptable. Cyproconazole per se was the primary component of the residue. A metabolism study in wheat was conducted to determine the fate of the phenyl portion of cyproconazole in plants. Results of the study have been submitted and the Agency found that residues from the wheat metabolism study were not significantly different from the coffee metabolism study.

Adequate enforcement methodology has been submitted to the EPA and has passed a method validation trial by EPA's analytical laboratories. Additional data has been submitted to demonstrate that residues of several other pesticides registered for use on coffee do not interfere with the method.

Prior to publication in the Pesticide Analytical Manual, Vol. II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1130A, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA (703) 305-5937.

F. Environmental Fate

No domestic use of cyproconazole is associated with the established tolerance in coffee.

G. International Tolerances

No international tolerances have been established under CODEX for cyproconazole. (PM 21)

4. ZENECA Ag Products

PP 6F4790

EPA has received a pesticide petition (PP 6F4790) from ZENECA Ag Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850-5458, proposing to amend 40 CFR part 180 by establishing a tolerance for residues of tralkoxydim, 2-cyclohexen-1-one, 2[1-(ethoxyimino) propyl]-3-hydroxy-5-(2,4,6-trimethylphenyl)-(9CI) in or on the food commodities barley grain, barley straw, barley hay, wheat grain, wheat forage, wheat straw, and wheat hay at 0.1 parts per million (ppm). The proposed analytical method is High Pressure Liquid Chromatography with ultra-violet detection (HPLC-UV).

A. Residue Chemistry

1. *Plant metabolism.* Wheat Plant metabolism was evaluated in wheat. 14C-Tralkoxydim, labeled in the equivalent C4/C6 positions of the cyclohexenone ring, was applied as a foliar spray to field-grown spring wheat. A single application was made at a rate of 0.31 lb ai/acre at Zadok's growth stage 31. A representative forage sample was harvested 22 days post-application. The remainder of the crop was harvested at maturity, 96 days post-application, then separated into straw and grain prior to analysis.

The total radioactive residues (TRR) in forage, straw and grain were 0.71, 1.29 and 0.013 mg/kg tralkoxydim equivalents, respectively. No residues of parent were detected and at least ten individual components were initially observed, demonstrating extensive metabolism of tralkoxydim. Characterization of the total radioactive

residue in grain by extraction indicates that no single component exceeds 0.01 mg/kg. Also, in both forage and straw, the same complex metabolic profile was evident. Characterization showed that none of the metabolites exceeded 3.6% TRR (0.05 mg/kg) in any of the fractions examined.

2. *Analytical method.* The method of analysis uses High Pressure Liquid Chromatography. It is method PRAM 99A and it has been validated using independent laboratory confirmatory trials as described in US EPA PR Notice 88-5. The method is for extraction and quantification of tralkoxydim residues in wheat and barley crops. Grain, straw, or forage is extracted into acetonitrile, filtered, and re-extracted into dichloromethane. The organic layer is used for analysis. The limit of detection of the analytical method is 0.02 ppm, while the limit of quantification is 0.1 ppm.

3. *Magnitude of residues.* ZENECA requests registration of 2 concentrations of tralkoxydim, 80% and 40% for ACHIEVE 80DG and ACHIEVE 40DG, respectively. These products use the same rate of application and demonstrate that there are no detectable residues on wheat and barley crops when either product is used according to the label directions.

Wheat: ACHIEVE 80DG containing 80% tralkoxydim. Residue data are available for tralkoxydim applied postemergence on wheat at the maximum label rate of 0.25 lb ai/A. Application was made from full tillering to first detectable node growth stage. In 1995, a total of 20 magnitude of the residue trials were conducted on spring wheat. There were no detectable residues (<0.02 ppm LOD) on wheat grain or straw in any of the trials at the pre-harvest interval of 60 days. There were no detectable residues on hay at the pre-harvest interval of 45 days. There were no detectable residues on immature forage at the pre-harvest interval of 30 days.

Two (2) winter wheat trials were conducted in 1995 to determine forage residues of tralkoxydim in winter wheat, using ACHIEVE DG, 80% concentration (ACHIEVE 80DG). The product was applied at the maximum label rate at growth stages from advanced tillering to full tillering. The winter wheat forage data showed no detectable residues at either 16 or 18 days after treatment. These results fall well within the proposed forage pre-harvest interval of 30 days.

ACHIEVE 40DG containing 40% tralkoxydim. There were 3 magnitude of the residue trials conducted on spring wheat in 1994 and one trial was

conducted in 1993. In addition, 6 trials were conducted in Canada during 1986 and 1987. (Note: The Canadian trials were conducted using a 50% concentration of tralkoxydim at a higher use rate of 0.3 - 0.6 lb ai/A). There were no detectable residues (<0.02 ppm LOD) on wheat grain or straw in any of the trials at the pre-harvest interval of 60 days. There were no detectable residues on hay at the pre-harvest interval of 45 days. There were no detectable residues on immature forage at the pre-harvest interval of 30 days. Despite having no detectable residues of tralkoxydim at 0.02 ppm, it is proposed that the tolerance level be based on the limit of quantification (LOQ) of the tolerance enforcement method, which has been validated to 0.1 ppm for tralkoxydim. The proposed tolerance of 0.1 ppm for wheat grain, forage, straw and hay is five (5) times greater than any residue that would result from the application of ACHIEVE DG arising from the proposed use pattern.

Wheat Products (processing). The wheat processing study demonstrated that there are no detectable residues (<0.02 ppm) in the bran, flour, middlings, shorts, and germ. Therefore, no food or feed additive tolerances are required for processed wheat commodities.

Barley: ACHIEVE 80DG containing 80% tralkoxydim. A total of 12

magnitude of the residue trials were conducted in 1995 on barley crops for tralkoxydim applied postemergence at the maximum label rate of 0.25 lb ai/A. The product was applied at full tillering to first detectable node growth stage. There were no detectable residues (<0.02 ppm) on barley grain or straw at the pre-harvest interval of 60 days. There were no detectable residues in hay at the pre-harvest interval of 45 days.

ACHIEVE 40DG containing 40% tralkoxydim. In 1994, 3 magnitude of the residue trials were conducted on barley using ACHIEVE DG, 40% concentration (ACHIEVE 40DG). In addition, 6 magnitude of the residue trails that were conducted in Canada during 1986 and 1987. (Note: The Canadian trials were conducted using a 50% concentration of tralkoxydim at a higher use rate of 0.3 - 0.6 lb ai/A). There were no detectable residues (<0.02 ppm) on barley grain or straw at the pre-harvest interval of 60 days. There were no detectable residues in hay at the pre-harvest interval of 45 days.

Despite having no detectable residues of tralkoxydim at 0.02 ppm, it is proposed that the tolerance level be based on the limit of quantification (LOQ) of the tolerance enforcement method, which has been validated to 0.1 ppm for tralkoxydim. The proposed

tolerance of 0.1 ppm for barley grain, hay and straw is five (5) times greater than any residue that would result from the application of ACHIEVE DG arising from the proposed use pattern.

Barley Products (processing). The barley processing study demonstrated that there are no detectable residues (<0.02 ppm) in the pearled barley, flour and bran. Therefore, no food or feed additive tolerances are required.

Animal Products. Based on the results of the poultry and ruminant metabolism studies, the extensive metabolism and rapid excretion of either tralkoxydim or any of its metabolites, and the poultry and ruminant consumption of commodities used in animal feed, there are no expected residues of tralkoxydim in meat, milk, or eggs.

B. Toxicological Profile

1. Acute toxicity. Tralkoxydim technical results of the acute toxicity testing: acute oral in the rat LD50 > 934 mg/kg, acute dermal in the rat LD50 > 2,000 mg/kg, acute inhalation in the rat LD50 > 3.5 mg/L, eye irritation in the rabbit showed mild irritancy, skin irritation in the rabbit showed a slight irritancy. Tralkoxydim is not a skin sensitizer.

2. Genotoxicity.

Assay	Type	Result
<i>In vitro</i>	Ames	negative
	Mouse lymphoma	negative
	Human lymphocyte cytogenetics	negative
<i>In vivo</i>	Mouse micronucleus	negative
	UDS	negative

3. Reproductive and developmental toxicity. (Reproductive toxicity) Tralkoxydim showed no evidence of

reproductive toxicity to rats. Tralkoxydim was dosed to rats at levels of 2.5 mg/kg/day (50 ppm), 10 mg/kg/

day (200 ppm) and 50 mg/kg/day (1,000 ppm) in a 3 generation reproductive toxicity study.

Study Type Reproductive Toxicity	NOEL	Effect Description
Rat (diet) 3 generation.	NOEL = 10 mg/kg/day (200 ppm).	LEL is 1,000 ppm based on reduced litter weights and weight gain in pups and bodyweight gain effects, food consumption and reduced liver weights in adults

(Developmental toxicity) Tralkoxydim caused no clear dose related developmental effects in the rabbit. At

a dose of 30 mg/kg/day, tralkoxydim caused some developmental effects in the rat manifested by skeletal defects

including single misshapen centra. The NOEL for developmental toxicity was established at 3 mg/kg/day.

Study Type Developmental Toxicity	NOEL/LEL	Effect Description
Rabbit (by gavage).	NOEL = 2.5 mg/kg/day fetotoxicity LEL = 20 mg/kg/day NOEL = 20 mg/kg/day maternal.	No clear dose-related developmental effects. LEL effect, increased partially ossified 2nd lumbar transverse process.
Rat (by gavage)	NOEL = 3 mg/kg/day fetotoxicity and developmental LEL = 30 mg/kg/day NOEL = 30 mg/kg/day maternal.	LEL for maternal toxicity is 300 mg/kg/day maternal death and overt toxicity. Developmental LEL is 30 mg/kg/day, skeletal defects includes single misshapen centra.

Study Type Developmental Toxicity	NOEL/LEL	Effect Description
Rat (by gavage)	NOEL = 3 mg/kg/day LEL = 200 mg/kg/day maternal, fetotoxicity and developmental.	LEL for fetotoxicity effect, increased post-implantation loss. Developmental effect fused or misshapen centra. Maternal LEL is based on mortalities & overt signs of toxicity.

4. *Subchronic toxicity.* Tralkoxydim is of low subchronic toxicity in 21-day dermal testing.

5. *Chronic toxicity.* Tralkoxydim is not a carcinogen in the rat. The dose levels used in the 2 year combined

chronic/oncogenicity study on rats were as follows.

Tralkoxydim in Diet (ppm)	Male rat (mg/kg/day)	Female rat (mg/kg/day)
50	2.3	3.0
500	23.1	30.1
2,500	117.9	162.8

Tralkoxydim administration was associated with an increase in the incidence of benign Leydig cell tumors in the male rat at the top-dose of 2,500 ppm, only. This increase represented an exacerbation of a naturally occurring tumor type in the male rat and was

considered to be the result of a physiological response to tralkoxydim administration. There was no evidence of a treatment-related effect or incidence of any other tumor type (malignant or benign) in male or female rats at any dose.

Oncogenicity - Hamster. Tralkoxydim is not an oncogen in the hamster. The dose levels used in the combined chronic toxicity/oncogenicity study on hamsters were as shown in the table below.

Tralkoxydim in Diet (ppm)	Male hamster (mg/kg/day)	Female hamster (mg/kg/day)
250	14.9	14.8
2,500	153.0	148.3
7,500	438.6	427.9

There was no increased tumor incidence or early onset of tumors in

hamsters receiving up to 7,500 ppm tralkoxydim in the diet. The NOEL was

established at 250 ppm, equivalent to 15 mg/kg bodyweight/day.

Study Type Oncogenicity	NOEL/LEL	Effect Description
Hamster (diet)	NOEL = 250 ppm (15 mg/kg/day) LEL = 2,500 ppm	LEL effect: decreased lymphocyte numbers (in males only) and increased liver lipofuscin pigment at 2,500 and 7,500 ppm.

The hamster instead of the mouse was selected as the second test species for oncogenicity testing because laboratory mice developed hepatic porphyria at low doses of tralkoxydim. Extensive mechanism data in support of the mouse specific porphyria has been provided. The results of these studies led ZENECA to the conclusion that the mouse was not an appropriate second test species for chronic toxicity/oncogenicity testing of tralkoxydim since the level of sensitivity in the mouse precluded the administration of a dose sufficient to determine chronic/oncogenicity effects in a lifetime feeding study.

One-Year Feeding Study - Dog. Tralkoxydim was administered to groups of 4 beagle dogs at dose levels of 0, 0.5, 5.0, and 50 mg/kg/day, as a daily oral dose in the food. At 50 mg/kg/day there was hepatotoxicity (marked increase in liver weight) and an effect

on the adrenal gland (increase in weight and cortical vacuolation). At a dose of 5 mg/kg/day, the following changes were not considered toxicologically significant: a slight increase in adrenal weight relative to body weight in males, and a slight adaptive effect in the liver of one male dog considered to be abnormally susceptible. These changes are of no toxicological significance.

The resulting NOEL from this study is 0.5 mg/kg/day. Based on the EPA review of tralkoxydim toxicity data, the NOEL from this study was recommended for use in establishing a provisional RfD.

The resulting RfD, with an uncertainty factor of 100 is 0.005 mg/kg/day.

6. *Animal metabolism.* Tralkoxydim is well absorbed and completely metabolized in the rat. Excretion is rapid and there is no accumulation of tralkoxydim or metabolites. There are

no significant plant metabolites that are not animal metabolites.

7. *Metabolite toxicology.* Toxicity testing results for the tralkoxydim parent compound is indicative of any metabolites, either in the plant or animal.

C. Aggregate Exposure

1. *Dietary exposure (Food).* Tralkoxydim is to be used on wheat and barley crops, only. For the purposes of assessing the potential dietary exposure, ZENECA estimated aggregate exposure based on the Theoretical Maximum Residue Contribution (TMRC) from the tolerances of tralkoxydim on wheat at 0.1 ppm and barley at 0.1 ppm. This is a worst case estimate of aggregate exposure and assumes 100% of the wheat and barley crops in the United States will have residues of tralkoxydim at the 0.1 ppm. Dietary exposure to residues of tralkoxydim in or on food

will be limited to residues on wheat and barley, and food derived from wheat and barley. Based on animal metabolism data and because there are no residues on the crops at time of harvest or at grazing intervals, we have concluded that there is reasonable expectation that no measurable residues of tralkoxydim will occur in meat, milk, poultry, or eggs from this use. Since tralkoxydim is a new herbicide, there are no other established U.S. tolerances for tralkoxydim.

Due to no detectable residues in grain at harvest, even after processing, the dietary risk assessment has been conducted on the basis of the limit of quantification of 0.1 mg/kg. This is significantly above (5 \times) the limit of detection of tralkoxydim residues of 0.02 mg/kg determined by ZENECA's analytical methods used in the magnitude of residue studies. However, even using a tolerance level of 0.1 mg/kg (limit of quantification) the chronic assessment for tralkoxydim indicates less than 10% of the RfD is consumed, for any given subpopulation, even assuming 100% market share. Based on a review of available toxicity data for tralkoxydim, there are no toxicological endpoints of concern for acute dietary risk.

Agricultural use of tralkoxydim on wheat and barley, therefore, does not represent an acute or chronic risk to the U.S. population, infants, children, or any other of the 23 subpopulations evaluated in this assessment.

2. *Drinking water.* Based on the available studies, exposures are not anticipated to residues of tralkoxydim in drinking water. Tralkoxydim does not leach. It is unlikely that tralkoxydim would be in drinking water. Tralkoxydim is unlikely to enter surface water bodies to any significant degree except by direct accidental over-spray. Should this arise, tralkoxydim will be readily degraded by one or more of a number of contributory processes; studies have shown that degradation in flooded anaerobic soil occurs with a half-life of approximately 25 days, aqueous hydrolysis (pH 5) with a half-life of less than 7 days and aqueous photolysis also with a half-life of less than 7 days. All these processes will ensure that any tralkoxydim entering surface water bodies will be short-lived and tralkoxydim will not result in any significant contamination of potential drinking water sources. Therefore, it is not appropriate to assess aggregate exposure from drinking water.

3. *Non-dietary exposure.* Since tralkoxydim is not registered for residential or turf uses, and does not represent a groundwater contamination

concern, exposures from other than dietary or occupational sources are extremely unlikely.

D. Cumulative Effects

Tralkoxydim is a new class of chemistry for herbicides used on wheat and barley. Although tralkoxydim is in the chemical class of compounds called cyclohexanediones, it is the only herbicide in this class to be used on wheat and barley crops. No evidence or information exists to suggest that the toxic effects produced by tralkoxydim would be cumulative with those of any other chemical compound.

E. Safety Determination

1. *U.S. population.* Using the conservative assumptions described above, based on the completeness and reliability of the toxicity data, the aggregate exposure to tralkoxydim will utilize less than 4% of the RfD for the U.S. Population. EPA generally has no concern for exposures below 100 percent of the RfD. There is reasonable certainty that no harm will result from aggregate exposure to residues of tralkoxydim, including all anticipated dietary exposure.

2. *Infants and children.* In assessing the potential for additional sensitivity for infants and children to residues of tralkoxydim, the three-generation reproductive study in rats and the developmental toxicity studies in the rat and rabbit were considered. Tralkoxydim showed no evidence of reproductive toxicity. Tralkoxydim caused no developmental toxicity in the rabbit. At a dose of 30 mg/kg/day, tralkoxydim caused some developmental effects in the rat manifested by skeletal defects including single fused or misshapen centra. The NOEL for developmental toxicity was established at 3 mg/kg/day.

Based on the current toxicological data requirements, the database relative to pre- and post-natal effects for children is complete. Further, for the chemical tralkoxydim, the NOEL at 0.5 mg/kg/day from the dog feeding study which was used to calculate the RfD, is already lower than the NOEL from the developmental study in rats by a factor of approximately 10-fold. In addition, residue field trials have shown that there are no detectable residues of tralkoxydim on wheat and barley, indicating negligible exposure potential. Therefore, an additional uncertainty factor is not warranted and the RfD at 0.005 mg/kg/day is appropriate for assessing aggregate risk to infants and children.

The percentage of the RfD that will be utilized by aggregate exposure to

tolerance level residues of tralkoxydim are: 2% for nursing infants, 6% for children 1-6 years, and 5% for children 7-12 years. Therefore, there is reasonable certainty that there will be no harm to these sensitive subgroups of the U.S. population. The agricultural use of tralkoxydim on wheat and barley does not represent an acute or chronic risk to the U.S. population, infants, children or any of the 23 subgroups that were evaluated.

F. International Tolerances

There are no Codex Maximum Residue Levels established for tralkoxydim. (PM 25)

[FR Doc. 97-17176 Filed 7-1-97; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[OPP-64033; FRL 5724-7]

Notice of Receipt of Requests for Amendments to Terminate the Use of Methamidophos on All Crops Except Cotton and Potatoes, and to Cancel All Methamidophos 24(c) Food-Use Registrations Not Labeled for Use on Tomatoes Only

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests for amendment by Bayer Corporation and Valent USA, the sole U.S. registrants of the insecticide methamidophos, to terminate the use of methamidophos on all agricultural crops except cotton and potatoes by deleting uses from all methamidophos FIFRA section 3 registrations, and to cancel all section 24(c) food-use registrations not labeled for use on tomatoes only.

DATES: Public comment on this notice, in order to be considered, must be received by August 1, 1997. Unless EPA publishes a notice in the **Federal Register** modifying this notice, EPA will approve these use terminations and product cancellations and make them effective on December 29, 1997, subject to the existing stocks provision specified herein.

ADDRESSES: By mail, submit comments to the 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 of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Jeff Morris, Special Review Branch, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail: Special Review Branch, 3rd floor, 2800 Crystal Drive, Arlington, VA, (703) 308-8029; e-mail: morris.jeff@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be cancelled or amended to terminate one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register** and provide for a 30-day public comment period. Thereafter, the Administrator of EPA

may approve such a request, unless the Administrator determines, in the case of a pesticide that is registered for a minor agricultural use, that the cancellation or termination of uses would adversely affect the availability of the pesticide for use. If such a determination is made, unless certain exceptions apply, the Administrator may not approve or reject a request until 180 days have passed from the date of publication in the **Federal Register** of the notice of receipt. Methamidophos is registered for minor agricultural uses that are affected by the request to terminate uses and cancel registrations.

II. Background

EPA conducted an occupational risk assessment that estimated risks associated with short and intermediate-term exposures of agricultural workers to methamidophos. The assessment indicated that the risks to workers of acute exposure exceeded EPA's level of concern. In addition to the risk assessment, EPA had California and nationwide human incident data indicating acute worker exposure incidents associated with methamidophos use. EPA met with Bayer and Valent, the sole U.S. methamidophos registrants, on August 1, 1996, to present EPA's concerns and discuss voluntary measures to reduce

risk. At the meeting, the registrants proposed the use terminations and product cancellations announced in this notice, as well as other measures including additional spray drift language, a phase-in of closed mixing and loading systems, and participation in industry-wide education efforts.

III. Intent to Terminate Uses and Cancel Registrations

This notice announces receipt of the methamidophos registrants' requests to terminate uses and cancel registrations under sections 3 and 24(c) of FIFRA, and provides notice of EPA's intent to accept those requests. In letters dated November 12, 1996, and February 21, 1997, Bayer and Valent requested that their FIFRA section 3 registrations be amended to terminate (by use deletion) the use of methamidophos on broccoli, brussels sprouts, cabbage, cauliflower, celery, and sugar beets, and that their section 24(c) registrations labeled for melons, cucumbers, lettuce, alfalfa, bermuda grass, peppers, clover, and eggplant be cancelled, leaving tomatoes as the only remaining food use with methamidophos 24(c) registrations. The registrations for which the registrants have requested use terminations and product cancellations are listed in the following table:

TABLE 1. — METHAMIDOPHOS REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO TERMINATE USES OR CANCEL CERTAIN PESTICIDE REGISTRATIONS

Registration No.	Product Name	Action Requested	Terminate from Label/Cancel Registration
3125-280	Monitor 4 Insecticide	Terminate Uses	broccoli, brussels sprouts, cabbage, cauliflower, celery, sugar beets
569639-56	Monitor 4 Spray	Terminate Uses	broccoli, brussels sprouts, cabbage, cauliflower, celery, sugar beets
AZ89002000	Monitor 4 Spray	Cancel Registration	alfalfa, seed crop; bermuda grass, seed crop
AZ82001300	Monitor 4 L.I.	do.	alfalfa, seed crop; bermuda grass, seed crop
CA83006400	Monitor 4 L.I.	do.	alfalfa, seed crop; clover, seed crop
AZ93000500	Monitor 4 Spray	do.	head lettuce, crisp head types only
FL89000600	Monitor 4 Spray	do.	head lettuce, crisp head types only
AZ90001100	Monitor 4 L.I.	do.	head lettuce, crisp head types only
CA80018600	Monitor 4 L.I.	do.	head lettuce, crisp head types only
FL81001200	Monitor 4 L.I.	do.	head lettuce, crisp head types only
AZ93000600	Monitor 4 Spray	do.	melons
FL89001100	Monitor 4 Spray	do.	melons
LA91001100	Monitor 4 Spray	do.	melons
TX89000800	Monitor 4 Spray	do.	melons
CA88002100	Monitor 4 L.I.	do.	melons
FL81003400	Monitor 4 L.I.	do.	melons
GA90000400	Monitor 4 L.I.	do.	melons, cucumbers
LA91000900	Monitor 4 L.I.	do.	melons, cucumbers
TX84002000	Monitor 4 L.I.	do.	melons
FL89001200	Monitor 4 Spray	do.	cucumbers
GA90000500	Monitor 4 Spray	do.	cucumbers, melons

TABLE 1. — METHAMIDOPHOS REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO TERMINATE USES OR CANCEL CERTAIN PESTICIDE REGISTRATIONS—Continued

Registration No.	Product Name	Action Requested	Terminate from Label/Cancel Registration
LA91001000	Monitor 4 Spray	do.	cucumbers
FL81000900	Monitor 4 L.I.	do.	cucumbers
FL89001000	Monitor 4 Spray	do.	eggplant
GA90000100	Monitor 4 L.I.	Delete Eggplant Use Only	eggplant
GA86000400	Monitor 4 Spray	Delete Eggplant Use Only	eggplant
FL81003300	Monitor 4 Spray	Cancel Registration	eggplant
FL89001300	Monitor 4 Spray	do.	cabbage
CA84021800	Monitor 4 L.I.	do.	celery
CA87001400	Monitor 4 L.I.	do.	roses
FL89001400	Monitor 4 Spray	do.	lettuce; Boston, bibb, romaine, and leaf
FL92001200	Monitor 4 L.I.	do.	lettuce; Boston, bibb, romaine, and leaf
FL96001300	Monitor 4 L.I.	do.	peppers
FL96000300	Monitor 4 Spray	do.	peppers
GA93000600	Monitor 4 L.I.	do.	peppers
GA93000700	Monitor 4 Spray	do.	peppers
LA91001200	Monitor 4 Spray	do.	peppers
TX89000700	Monitor 4 Spray	do.	peppers
CA88002000	Monitor 4 L.I.	do.	peppers
LA91000700	Monitor 4 L.I.	do.	peppers
NM82000800	Monitor 4 L.I.	do.	peppers
TX82001900	Monitor 4 L.I.	do.	peppers

IV. Public Comment Procedures

EPA invites interested persons to submit written comments in response to this notice of receipt of requests to terminate uses and cancel registrations. Comments, to be considered, must be received by August 1, 1997. Comments must bear a notation indicating the document control number. Three copies of the comments should be submitted to either location listed under "ADDRESSES" at the beginning of this notice.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132, at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

V. Public Record

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP-64033] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP-64033]. Electronic comments on this notice may

be filed online at many Federal Depository Libraries.

VI. Existing Stocks

For the purposes of this notice, existing stocks will be defined as those stocks of methamidophos products with EPA registration numbers 3125-280 and 59639-56 not labeled for potatoes and cotton only, and Special Local Need (24c) food-use registrations not labeled for use on tomatoes only, that were packaged, labeled, and/or released for shipment prior to December 31, 1997. After December 31, 1997, methamidophos registrants may not sell or distribute existing stocks of cancelled methamidophos products or methamidophos products containing the terminated uses, and dealers and distributors may not sell any quantity of cancelled methamidophos products, or methamidophos products containing the terminated uses, to end users. End users may use existing stocks until such stocks are exhausted.

VII. Proposed Use Termination and Registration Cancellation Order

The registrants' request for use terminations and product cancellations will be accepted and will take effect on

December 29, 1997, subject to the above-noted existing stocks provision, unless EPA publishes a notice in the **Federal Register** modifying this proposed order.

List of Subjects

Environmental protection,
Agricultural commodities, Pesticides
and pests.

Dated: June 16, 1997.

Jack E. Housenger,

Acting Director, Special Review and
Reregistration Division, Office of Pesticide
Programs.

[FR Doc. 97-16890 Filed 7-1-97; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 29, 1997.

A. Federal Reserve Bank of Chicago
(Philip Jackson, Applications Officer)
230 South LaSalle Street, Chicago,
Illinois 60690-1413:

1. *Community National Bancorporation*, Waterloo, Iowa; to become a bank holding company by acquiring 100 percent of the voting

shares of Community National Bank (in organization), Waterloo, Iowa.

B. Federal Reserve Bank of St. Louis
(Randall C. Sumner, Vice President) 411
Locust Street, St. Louis, Missouri 63102-
2034:

1. *Commercial Bancshares, Inc.*,
Texarkana, Arkansas; to acquire 100
percent of the voting shares of Citizens
State Bank, Hempstead, Texas.

C. Federal Reserve Bank of Dallas
(Genie D. Short, Vice President) 2200
North Pearl Street, Dallas, Texas 75201-
2272:

1. *TNB Bancorporation, Inc.*,
Brenham, Texas, and TNB
Bancorporation of Delaware, Inc.,
Wilmington, Delaware; to become bank
holding companies by acquiring 100
percent of the voting shares of Texas
National Bank, Brenham, Texas.

Board of Governors of the Federal Reserve
System, June 27, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-17386 Filed 7-1-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will 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 July 18, 1997.

A. Federal Reserve Bank of Kansas City
(D. Michael Manies, Assistant Vice
President) 925 Grand Avenue, Kansas
City, Missouri 64198-0001:

1. *Thomas J., and S. June Remington*,
both of Lincoln, Nebraska, and Ada E.
Remington, McCook, Nebraska; to
acquire shares of Clatonia Bancshares,
Inc., Clatonia, Nebraska, and thereby
indirectly acquire Farmers Bank of
Clatonia, Clatonia, Nebraska.

Board of Governors of the Federal Reserve
System, June 27, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-17387 Filed 7-1-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[Dkt. C-3733]

1554 Corporation, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, the California company, doing business as The Mellinger Company, and its president from making any unsubstantiated success, profitability, performance, benefits, efficacy or success rate claims with regard to a business opportunity product or service. The consent order also prohibits the respondents from using testimonials or endorsements that make deceptive or unsubstantiated representations.

DATES: Complaints and Order issued
April 14, 1997.¹

FOR FURTHER INFORMATION CONTACT:
Justin Dingfelder, FTC/S-4302,
Washington, D.C. 20580. (202) 326-
3017.

SUPPLEMENTARY INFORMATION: On
Wednesday, February 5, 1997, there was
published in the **Federal Register**, 62 FR
5412, a proposed consent agreement
with analysis in the Matter of 1554
Corporation, et al., for the purpose of
soliciting public comment. Interested
parties were given sixty (60) days in
which to submit comments, suggestions
or objections regarding the proposed
form of the order.

No comments having been received,
the Commission has ordered the
issuance of the complaint in the form
contemplated by the agreement, made
its jurisdictional findings and entered
an order to cease and desist, as set forth
in the proposed consent agreement, in
disposition of this proceeding.

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 97-17366 Filed 7-1-97; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

[Dkt. C-3731]

The Administrative Company, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, a Texas-based corporation and its officer from making certain false, misleading or unsubstantiated claims concerning the benefits and appropriateness of living trusts or any legal instrument or service they offer and requires the respondents to clearly and conspicuously disclose to consumers that such trusts may be legally challenged on similar grounds as wills, that living trusts may not be appropriate in all instances, and that the transfer of an individual's assets into a living trust is not included in the price of creating the trust.

DATES: Complaint and Order issued April 14, 1997.¹

FOR FURTHER INFORMATION CONTACT: Janice Charter, Federal Trade Commission, Denver Regional Office, 1961 Stout St., Suite 1523, Denver, CO. 80294. (303) 844-2272.

SUPPLEMENTARY INFORMATION: On Wednesday, February 5, 1997, there was published in the **Federal Register**, 62 FR 5413, a proposed consent agreement with analysis In the Matter of The Administrative Company, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth

in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 97-17357 Filed 7-1-97; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

[Dkt. C-3739]

American Cyanamid Company; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, a New Jersey-based distributor of agricultural herbicides and insecticides from conditioning the payment of rebates or other incentives on the resale prices its dealers charge for their products, and from agreeing with its dealers to control or maintain resale prices. The consent order requires the respondent, for three years, to post clearly and conspicuously a statement, on any price list, advertising or catalogue that contains a suggested retail price, that dealers remain free to determine on their own the prices at which they sell the company's products. In addition, the respondent must mail a letter containing this statement to all current dealers, distributors, officers, management employees and sales representatives.

DATES: Complaint and Order issued May 12, 1997.¹

FOR FURTHER INFORMATION CONTACT: Michael Antalics, FTC/S-2627, Washington, DC 20580, (202) 326-2821.

SUPPLEMENTARY INFORMATION: On Tuesday, February 11, 1997, there was published in the **Federal Register**, 62 FR 6255, a proposed consent agreement with analysis In the Matter of American Cyanamid Company, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

¹ Copies of the Complaint, the Decision and Order, and statements by Chairman Pitofsky, and Commissioners Steiger, Varney, Azcuena and Starek are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdiction findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 97-17358 Filed 7-1-97; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

[Docket No. 9281]

Exxon Corporation; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft amended complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

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

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston, Federal Trade Commission, S-4002, 6th & Pennsylvania Ave., NW, Washington, DC 20580. (202) 326-3153. Michael Dershowitz, Federal Trade Commission, S-4002, 6th & Pennsylvania Ave., NW, Washington, DC 20580. (202) 326-3158.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 3.25 of the Commission's Rules of Practice (16 CFR 3.25), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for June 24, 1997), on the World wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rule of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Exxon Corporation ("Exxon"). Among other things, Exxon is engaged in the manufacture and sale of automobile gasolines.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns allegedly deceptive advertising claims regarding the performance attributes of Exxon gasolines. On September 11, 1996, the Commission issued a complaint challenging as unsubstantiated Exxon's advertising claims that switching to Exxon 93 Supreme gasoline from other gasoline brands and from lower octane grades of Exxon gasoline will significantly reduce automobile maintenance costs for consumers generally. The complaint also challenged as unsubstantiated Exxon's claim that switching to Exxon gasolines from other brands will significantly reduce automobile maintenance costs for consumers generally. The case was withdrawn from litigation on April 25, 1997.

The proposed consent order contains both injunctive and consumer education provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits respondent from making unsubstantiated representations concerning the engine cleaning ability

of any gasoline or the effect of any gasoline on automobile maintenance or maintenance costs.

Part I includes several "safe harbors" defining permissible substantiation for certain types of engine cleaning claims. First, it provides that any representation that a gasoline will keep clean or clean up fuel injector deposits to a level that engine performance is not adversely affected will be deemed to be substantiated if Exxon possesses competent and reliable testing demonstrating no more than 5 percent flow restriction in each injector over the accumulation of 10,000 miles. In addition, Part I provides that any representation that a gasoline will keep clean or clean up intake valve deposits to a level that engine performance is not adversely affected will be deemed to be substantiated by competent and reliable testing demonstrating intake valve deposit weight of less than 100 mg-per-valve on average over the accumulation of 10,000 miles. Finally, Part I of the proposed order also allows truthful representations regarding the numerical octane rating of any gasoline.

Part II and III of the proposed order contain a consumer education remedy designed to educate drivers about how to determine their car's octane needs. Part II requires Exxon to produce and disseminate a 15 second television message stating that most cars run properly on regular octane, and that drivers should check their owner's manual. The message must be broadcast in eighteen designated markets in two separate waves beginning in September 1997. The order establishes a performance standard that Exxon must meet in terms of the audience exposure achieved by the ad for each market and in each wave. Exxon must purchase sufficient air time so that the ad reaches 65% of the target audience (adults ages 18-49) an average of 2.7 times per person in the first wave, and 51% of the target audience an average of 2 times in the second wave. Exxon must monitor the actual exposure the ad achieves in each market, and should it fail to achieve at least 90 percent of the exposure levels specified in the order for each market, it must seek additional spots from the television stations to meet the specified targets.

Part III of the order requires Exxon to produce and disseminate a consumer brochure that is mentioned in the 15 second broadcast message required in Part II of the order. The brochure, which will be made available free of charge at Exxon service stations, informs consumers that most cars will not benefit from higher octane gasoline, and also explains that consumers may need

higher octane gasoline if their owner's manual recommends it or if their car engine consistently knocks or pings.

Parts IV, V, VI, and VII of the order require Exxon to maintain copies of all materials relied upon in making any representation covered by the order; to provide copies of the order to certain of the company's personnel; to notify the Commission of any change in the corporate structure that might affect compliance with the order; and to file compliance reports with the Commission. Part VIII of the order is a "sunset" provision, dictating that the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,
Acting Secretary.

Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part in Exxon Corporation, Docket No. 9281

Last year, the Commission issued a complaint against Exxon Corporation and, in accordance with its practice, a Notice of Contemplated Relief, the title of which is self-explanatory. The complaint alleged that Exxon had made certain deceptive claims concerning the need for its premium gasoline. Today the Commission accepts for public comment a settlement that provide less relief than the Commission contemplated when it issued the complaint and less relief than it ordered against other companies that previously have settled similar charges.¹ I agree that the core provision of the proposed order barring the allegedly deceptive claims is appropriate,² but I cannot agree to the omission of a broader provision barring Exxon from making unsubstantiated claims concerning "the relative or absolute attributes of any gasoline with respect to engine performance, power [or] * * * acceleration."

An injunctive provision covering not just the specific claims challenged in the complaint, but also, future deceptive claims of a similar nature is a common feature in Commission advertising

¹ See Sun Company, Inc., Docket C-3381 (consent order, May 6, 1992); Unocal Corporation, Inc., Docket C-3492 (consent order, April 24, 1994); Amoco Oil Company, Docket C-3655 (consent order, May 7, 1996).

² Order ¶§1.

orders. It provides an important deterrent, because any future advertising claims that do not comport with it are punishable by substantial civil penalties. The Commission previously has challenged similar advertising claims by three other gasoline companies, all of which, unlike Exxon, agreed to settlements without litigation, and all of which consented to inclusion of the broader injunctive relief omitted from this order.

Exxon's advertisements seem likely to have contributed to consumer misperceptions about the attributes of and the need for premium gasoline as much as gasoline advertisements run by the other companies. The more lenient injunctive coverage in Exxon's order will be less effective in deterring future deception and may create perverse incentives. In the future, companies may believe it is in their interest to decline negotiated settlement until after litigation has commenced if they think that the Commission will reward greater intransigence.

Narrowing the injunction might be worthwhile if some other effective remedy were added, and the proposed order adds a provision that requires Exxon to produce and disseminate a 15-second television commercial and distribute a certain number of copies of a brochure.³ Given the apparently entrenched consumer misperceptions allegedly created by Exxon's challenged claims about the need for and attributes of premium gasoline, a consumer education remedy is justified. The goal of the consumer education campaign, to correct apparently widespread and assuredly costly consumer misperceptions about the benefits of high octane gasoline, is laudable. Unfortunately, I do not believe that this particular campaign is likely to be effective. The Commission has extensive experience with advertising techniques, and that experience should tell us that there is a good deal more to creating a successful advertisement than first meets the eye.⁴ The commercial is uninspired at best, and we have no basis for concluding that it will be effective in conveying the desired message to consumers or in changing their misperceptions. The order does not provide a performance standard or other

means of assuring that this goal will be met.⁵

Although it may be argued that we similarly have no assurance of the effectiveness of the broader injunction that was included in the Notice of Contemplated Relief, we have, at least, the assurance that further deceptive claims covered by the order may result in substantial civil penalties and, therefore, that the company may think twice before running advertisements that might mislead reasonable consumers about the attributes of particular gasoline products. In addition, the injunctive relief would remain in place for 20 years, far longer than the likely effects of a single short-lived advertising campaign like the one proposed. On balance, I believe that the notice order is stronger. Perhaps the fact that Exxon was willing to sign this order rather than the notice order should tell us something.

To the extent that the proposed order is more narrow than the notice order, I respectfully dissent.

[FR Doc. 97-17280 Filed 7-1-97; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

[Dkt. C-3734]

Herb Gordon Auto World, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, the Maryland company and its seven dealerships from obscuring important cost information in fine or unreadable print, from advertising financed purchase or leasing terms that are not available to consumers, and from misrepresenting the terms of financing or leasing any vehicle, the existence of the amount of any balloon payment, or the existence, number or amount of payments for financed purchases. The consent order requires the respondents to make all the disclosures required by the Truth in Lending Act, Regulation Z, Consumer Leasing Act, and Regulation

M, and to ensure that the disclosures are noticeable, readable, and comprehensible to an ordinary customer.

DATES: Complaint and Order issued April 15, 1997.¹

FOR FURTHER INFORMATION CONTACT: David Medine or Carole Reynolds, FTC/S-4429, Washington, DC 20580. (202) 326-3224 or 326-3230.

SUPPLEMENTARY INFORMATION: On Wednesday, February 5, 1997, there was published in the **Federal Register**, 62 FR 5414, a proposed consent agreement with analysis in the Matter of Herb Gordon Auto World, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 82 Stat. 146, 147; 15 U.S.C. 45, 1601, *et seq.*; 15 U.S.C. 1667-1667e; 12 CFR 226)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 97-17359 Filed 7-1-97; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

[Docket No. C-3732]

Huling Bros. Chevrolet, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order requires, among other things, the Seattle, Washington, automobile dealerships to correctly calculate the annual percentage rate (APR) for financed purchases in accordance with Regulation Z, and to include in a clear and conspicuous manner all the disclosures required by law when a triggering term is used in an advertisement. The consent order

³The text of the negotiated advertisement is:

Hi, I'm Sherri Stuewer. I run Exxon's Baytown Refinery. We offer three octane grades. Which is right for you? Most cars will run properly on regular octane, so check your owner's manual * * * and stop by Exxon for this helpful pamphlet.

⁴The advertisement required by the order has not been copytyped.

⁵The order could have specified survey methodology and required that the advertisement be revised as needed until the survey results showed that a minimum number or percentage of consumers actually took the intended educational message from the advertising spot. The Commission has taken this approach in the past. RJR Foods, Inc., 83 F.T.C. 7, 16-21 (consent order, July 13, 1973).

¹Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

prohibits the respondents from misrepresenting the terms of financed deals, the APR, the amount of any periodic payment, the availability of any advertised credit terms, the sale price, or the availability of any rebate.

DATES: Complaint and Order issued April 14, 1997.¹

FOR FURTHER INFORMATION CONTACT: Charles Harwood or George Zweibel, Federal Trade Commission, Seattle Regional Office, 915 Second Ave., Suite 2896, Seattle, WA 98174, (206) 220-6350.

SUPPLEMENTARY INFORMATION: On Wednesday, February 5, 1997, there was published in the **Federal Register**, 62 FR 5416, a proposed consent agreement with analysis In the Matter of Huling Bros. Chevrolet, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat/ 719, as amended; 82 Stat. 146, 147; 15 U.S.C. 45, 1601, et seq.; 12 CFR 226)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 97-17360 Filed 7-1-97; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

[Dkt. C-3735]

The Money Tree, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order requires, among other things, the Georgia company and its officer to offer customers the chance to cancel the credit-life, credit-disability, or accidental death and dismemberment insurance they purchased, and to obtain cash refunds or credit which could

amount to as much as \$1.2 million. The consent order prohibits the respondents from requiring consumers to sign statements that such purchases are voluntary, if they are required to obtain the loan; from referring to credit-related insurance or auto club membership without telling consumers their loan applications have been approved and the amount of the approved loans; and requires the respondents to disclose to consumers that such coverage is optional and to have those consumers sign a form acknowledging that fact and the amount the extras will cost if they choose to purchase them. The consent order also prohibits violations of the Fair Credit Reporting Act provisions regarding disclosures to consumers when their credit reports influence the denial of credit.

DATES: Complaint and Order issued April 28, 1997.¹

FOR FURTHER INFORMATION CONTACT: Thomas Kane or Rolando Berrelez, FTC/S-4429, Washington, D.C. 20580. (202) 326-3224.

SUPPLEMENTARY INFORMATION: On Tuesday, February 18, 1997, there was published in the **Federal Register**, 62 FR 7232, a proposed consent agreement with analysis In the Matter of The Money Tree, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 82 Stat. 146, 147; 84 Stat. 1128-36; 15 U.S.C. 45, 1601, et seq., 1681-1681(f))

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 97-17361 Filed 7-1-97; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

[Dkt. C-3736]

Nationwide Syndications, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, the Illinois company and its president from representing that NightSafe Glasses or any substantially similar product makes driving safer or improves night vision, and requires them to have competent and reliable scientific evidence to substantiate claims about the efficacy, performance, benefits or safety of such products. The consent order also prohibits the use of the trade name "NightSafe" or any other trade name that implies the use of such product makes night driving safer. In addition, the respondents will pay \$125,000 in consumer redress.

DATES: Complaint and Order issued April 28, 1997.¹

FOR FURTHER INFORMATION CONTACT:

C. Steven Baker, Federal Trade Commission, Chicago Regional Office, 55 Monroe St., Suite 1860, Chicago, IL 60603 (312) 353-8156.

SUPPLEMENTARY INFORMATION: On Wednesday, February 5, 1997, there was published in the **Federal Register**, 62 FR 5417, a proposed consent agreement with analysis In the Matter of Nationwide Syndications, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 97-17362 Filed 7-1-97; 8:45 am]

BILLING CODE 6750-01-M

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, N.W., Washington, DC 20580.

FEDERAL TRADE COMMISSION

[Dkt. C-3729]

**Pre-Paid Legal Services, Inc.;
Prohibited Trade Practices, and
Affirmative Corrective Actions**

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, an Oklahoma-based corporation from making certain false and misleading claims concerning the benefits and appropriateness of living trusts or any legal instrument or service it offers and requires the respondent to clearly and conspicuously disclose to consumers that such trusts may be legally challenged on similar grounds as wills, that living trusts may not be appropriate in all instances, and that the transfer of an individual's assets into a living trust is not included in the price of creating the trust. In addition, the respondent must offer a \$165 refund to every purchaser of an American Association for Senior Citizens trust who hasn't already received a refund and who doesn't live in certain states that have already been offered partial refunds in connection with an earlier multi-state settlement.

DATES: Complaint and Order issued April 4, 1997.¹

FOR FURTHER INFORMATION CONTACT: Janice Charter, Federal Trade Commission, Denver Regional Office, 1961 Stout St., Suite 1523, Denver, CO 80294, (303) 844-2272.

SUPPLEMENTARY INFORMATION: On Wednesday, January 29, 1997, there was published in the **Federal Register**, 62 FR 4290, a proposed consent agreement with analysis in the Matter of Pre-Paid Legal Services, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,*Acting Secretary.*

[FR Doc. 97-17363 Filed 7-1-97; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

[Dkt. C-3737]

**SplitFire, Inc.; Prohibited Trade
Practices, and Affirmative Corrective
Actions**

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, the Illinois spark plugs manufacturer from making fuel economy, emissions, horsepower, or cost savings claims without competent and reliable scientific evidence to support them. The consent order also prohibits misrepresentations regarding the existence, contents, validity, results, conclusions or interpretations of any test or study. In addition, the consent order requires the respondent to possess competent and reliable scientific evidence to substantiate claims in endorsement or testimonials.

DATES: Complaint and Order issued April 28, 1997.¹

FOR FURTHER INFORMATION CONTACT: Laura Fremont, Federal Trade Commission, San Francisco Regional Office, 901 Market St., Suite 570, San Francisco, CA 94103. (415) 356-5270.

SUPPLEMENTARY INFORMATION: On Thursday, February 20, 1997, there was published in the **Federal Register**, 62 FR 7785, a proposed consent agreement with analysis in the Matter of Splitfire, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,*Acting Secretary.*

[FR Doc. 97-17364 Filed 7-1-97; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

[Dkt. C-3738]

**Zale Corporation; Prohibited Trade
Practices, and Affirmative Corrective
Actions**

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, the Texas-based chain of retail jewelry stores from misrepresenting the composition or origin of any imitation, cultured or natural pearl product. The consent order requires the respondent to include a word such as "artificial," "imitation," or "simulated" in close proximity to any representation that an imitation pearl product contains pearls; and to include a word such as "cultured" or "cultivated" in close proximity to any representation that a cultured pearl product contains pearls. In addition, the consent order requires the respondent, for three years, to make available to consumers in their stores an information sheet that describes the origin of imitation, cultured or natural pearls.

DATES: Complaint and Order issued April 28, 1997.¹

FOR FURTHER INFORMATION CONTACT: Matthew Gold, Federal Trade Commission, San Francisco Regional Office, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 356-5276.

SUPPLEMENTARY INFORMATION: On Thursday, February 20, 1997, there was published in the **Federal Register**, 62 FR 7786, a proposed consent agreement with analysis in the Matter of Zale Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 97-17365 Filed 7-1-97; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M-0251]

Biotronik, Inc.; Premarket Approval of Dromos DR/DR-A and Dromos SR/SR-B Cardiac Pacing Systems

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Biotronik, Inc., Lake Oswego, OR, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Dromos DR/DR-A and Dromos SR/SR-B Cardiac Pacing Systems. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of October 11, 1996, of the approval of the application.

DATES: Petitions for administrative review by August 1, 1997.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert J. Mazzaferro, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-443-8517.

SUPPLEMENTARY INFORMATION: On February 21, 1996, Biotronik, Inc., Lake Oswego, OR 97035-5369, submitted to CDRH an application for premarket approval of the Dromos DR/DR-A and Dromos SR/SR-B Cardiac Pacing Systems. The BIOTRONIK Dromos DR and Dromos SR are rate adaptive multiprogrammable pulse generators. The Dromos DR is an atrial-based dual-chamber pacemaker and the Dromos SR

is a single-chamber pacemaker suitable for either atrial or ventricular pacing therapy. The Dromos DR and Dromos SR have an accelerometer-based sensor and a rate-adaptive algorithm designed to automatically adjust the pacing rate to meet the patient's level of exertion. Rate adaptive pacing with the Dromos DR and Dromos SR pulse generators is indicated for patients exhibiting chronotropic incompetence and who would benefit from increased pacing rates concurrent with physical activity. Generally accepted indications for long-term cardiac pacing include, but are not limited to: Sick sinus syndrome (i.e., bradycardia-tachycardia syndrome, sinus arrest, sinus bradycardia), sinoatrial (SA) block, second- and third-degree AV block, and carotid sinus syndrome. Patients who demonstrate hemodynamic benefit through maintenance of AV synchrony should be considered for one of the dual-chamber or atrial pacing modes. Dual-chamber modes are specifically indicated for treatment of conduction disorders that require both restoration of rate and AV synchrony such as AV nodal disease, diminished cardiac output or congestive heart failure associated with conduction disturbances, and tachyarrhythmias that are suppressed by chronic pacing.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On October 11, 1996, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal

hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 1, 1997 file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 10, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97-17288 Filed 7-1-97; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M-0255]

DePuy, Inc.; Premarket Approval of DePuy 1 Bone Cement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its

approval of the application by DePuy, Inc., Warsaw, IN, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of DePuy 1 Bone Cement. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of February 11, 1997, of the approval of the application.

DATES: Petitions for administrative review by August 1, 1997.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hany W. Demian, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-2036.

SUPPLEMENTARY INFORMATION: On January 11, 1996, DePuy, Inc., Warsaw, IN 46581-0988, (formerly owned by DePuy International Ltd.), submitted to CDRH an application for premarket approval of DePuy 1 Bone Cement. The device is an acrylic bone cement and is indicated for the fixation of prostheses to living bone in orthopedic musculoskeletal surgical procedures for rheumatoid arthritis, osteoarthritis, traumatic arthritis, osteoporosis, avascular necrosis, collagen disease, severe joint destruction secondary to trauma or other conditions and revision of previous arthroplasty.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Orthopedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On February 11, 1997, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 1, 1997, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 5, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97-17290 Filed 7-1-97; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M-0258]

Intermedics Inc.; Premarket Approval of ThinLine™ Models 430-10 and 432-04 Endocardial Pacing Leads

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Intermedics Inc., Angleton, TX, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the ThinLine™ Models 430-10 and 432-04 Endocardial Pacing Leads. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of November 12, 1996, of the approval of the application. **DATES:** Petitions for administrative review by August 1, 1997.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lynette A. Gabriel, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-443-8243.

SUPPLEMENTARY INFORMATION: On January 29, 1996, Intermedics Inc., Angleton, TX 77515, submitted to CDRH an application for premarket approval of ThinLine™ Models 430-10 and 432-04 Endocardial Pacing Leads. These devices are permanent pacing leads and are indicated for chronic pacing and sensing of the atrium or ventricle when used with a compatible pulse generator.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On November 12, 1996, CDRH approved the application by a letter to

the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 1, 1997 file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 10, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97-17289 Filed 7-1-97; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA-482]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Methodology for Estimating Waiver Costs of HCFA Demonstration Projects; *Form No.:* HCFA-482; *Use:* The information collected is intended to provide guidance to individuals responsible for the preparation of waiver cost estimates for HCFA demonstrations. These estimates are used in analysis of potential costs and benefits associated with implementing a proposed policy. *Frequency:* On occasion; *Affected Public:* State, Local or Tribal Government, Business or other for profit, Not for profit institutions and, Individuals or Households; *Number of Respondents:* 50; *Total Annual Responses:* 50; *Total Annual Hours:* 4,000.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at <http://www.hcfa.gov/regs/prdact95.htm>, or to

obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: May 29, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97-17241 Filed 7-1-97; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA-R-88 and HCFA-2552]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Information Collection Requirements in HCFA Pub 14-3 Section 2120.1-2125 and Section 4115 of the Carriers Manual (HCFA-R-88); *Use:* Verification of ambulance compliance with State and Local

requirements is necessary to determine whether the ambulance qualifies for reimbursement under Medicare. Carriers require ambulances providing service to Medicare beneficiaries to submit documentation showing that they have the required equipment. *Frequency*: On occasion; *Affected Public*: Business or other for-profit; *Number of Respondents*: 100; *Total Annual Hours*: 25.

2. Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection*: Cost Report for Electronic Filing for Hospital and Hospital Health Care Complex Cost Report and Supporting Regulations in 42 CFR 413.20 and 413.24; *Form No.*: HCFA-2552-96; *Use*: This form is required by statute and regulation for participation in the Medicare program. The information is used to determine final payment for Medicare. Hospitals and related complexes are the main users. *Frequency*: Annually; *Affected Public*: Business or other for-profit, Not-for profit institutions, and State, Local or Tribal Government; *Number of Respondents*: 7,000; *Total Annual Responses*: 7,000; *Total Annual Hours Requested*: 4,599,000.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at <http://www.hcfa.gov/regs/prdact95.htm>, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: June 24, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97-17243 Filed 7-1-97; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HSQ-207-NC]

RIN 0938-AG32

Medicare Program; Description of the Health Care Financing Administration's Evaluation Methodology for the Peer Review Organization 5th Scope of Work Contracts

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice with comment period.

SUMMARY: This notice describes how HCFA intends to evaluate the Peer Review Organizations (PROs) for quality improvement activities, under their 5th Scope of Work (SOW) contracts, for efficiency and effectiveness in accordance with the Social Security Act. In accordance with the provisions of the Government Performance and Results Act of 1993, the 5th SOW contracts with the PROs are performance-based contracts.

DATES: This notice is effective on July 2, 1997. Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 2, 1997.

ADDRESSES: Mail written comments (an original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-207-NC, P.O. Box 26676, Baltimore, MD 21207-0476.

If you prefer, you may deliver your written comments (an original and 3 copies) to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, DC 20201-0001.

or
Room C5-09-26, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HSQ-207-NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, S.W., Washington DC 20201-0001, on

Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890).

Comments may also be submitted electronically to the following e-mail address: HSQ207NC@hcfa.gov. E-mail comments must include the full name and address of the sender and must be submitted to the referenced address in order to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments. Electronically submitted comments will also be available for public inspection at the Independence Avenue address shown above.

FOR FURTHER INFORMATION CONTACT: Henry Koehler, (410) 786-6850.

SUPPLEMENTARY INFORMATION:

I. Background

A. Program Description

The Peer Review Improvement Act of 1982 (title I, subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97-248) amended part B of title XI of the Social Security Act (the Act), establishing the PRO program. The PRO program was established in order to redirect, simplify, and enhance the cost-effectiveness and efficiency of the medical peer review process. Sections 1153 (b) and (c) of the Act define the types of organizations eligible to become PROs and establish certain limitations and priorities regarding PRO contracting. In 42 CFR part 462, subpart C, of our regulations, we describe the types of organizations eligible to become PROs. In § 462.101, we require they: (a) Be either a physician-sponsored organization as described in § 462.102, or a physician-access organization as described in § 462.103; and (b) demonstrate their ability to perform the review requirements set forth in § 462.104.

Under section 1153(h)(2) of the Act, the Secretary is required to publish in the **Federal Register** the general criteria and standards that will be used to evaluate the efficient and effective performance of contract obligations by PROs, and provide the opportunity for public comment. This notice sets forth the criteria that will be used to monitor PRO performance of quality improvement activities.

Section 1154 of the Act requires that PROs review those services furnished by physicians, other health care practitioners, and institutional and non-institutional providers of health care services, including health maintenance organizations and competitive medical plans, as specified in their contract with the Secretary. The Secretary enters into

contracts with PROs to perform the following two broad functions:

- To promote quality health care services for Medicare beneficiaries; and
- To determine whether those services are reasonable, medically necessary, furnished in the appropriate setting, and of a quality that meets professionally recognized standards of health care.

These functions, which include quality improvement projects, are central elements of the Health Care Quality Improvement Program (HCQIP). PRO contracts are awarded for three years with starting dates staggered into three approximately equal groups starting on April 1, July 1, and October 1.

B. Development of Evaluation Standards

Using the conceptual groundwork of a 1990 Institute of Medicine report ("Medicare: A strategy for quality assurance," Volumes 1 & 2, Committee to Design a Strategy for Quality Review and Assurance in Medicare, Division of Health Care Services, Institute of Medicine, KN Lohr, editor, National Academy Press, Washington, DC, 1990), we reinvented and modernized our quality assurance and improvement activities under the HCQIP. We launched the HCQIP in April 1993, reorienting the PRO program from a random sample case-by-case review to a system designed to encourage providers to maintain and strengthen their own internal quality management systems. The PROs monitor the quality of care provided in both fee-for-service and managed care settings using both a data-driven approach to monitor care and outcomes and a cooperative approach of working with the health care community to improve care.

The agency changed the focus of the PRO contracts in recognition that the case review approach as the principal means of monitoring did not give providers adequate information on systemic health care delivery problems and methods for improving service delivery systems and health outcomes. The HCQIP approach addresses these weaknesses, combining providers' internal quality management systems, driven by clinically-reliable data, with external monitoring and educational support from the PROs. Central to the monitoring system is the identification of patterns of care. The goal of these data analyses is to identify treatment patterns for individuals and populations that are consistent with current professional knowledge and that are likely to improve outcomes. The PROs educate physicians about best practices and assist hospitals and other

institutional and noninstitutional providers in developing internal quality monitoring systems that will lead to quality improvement.

In our recently modified 5th Scope of Work contracts with the PROs, we specified four objectives that PROs should maximize as they design and implement quality improvement projects. The PROs are directed to implement quality improvement projects that—

1. Result in measurable improvements;
2. Involve as many beneficiaries, providers and provider types as possible;
3. Focus on important clinical topics; and
4. Build internal and external capacity to improve care.

C. Measuring PRO Performance

The most important activity for the PROs in their 5th Scope of Work contracts is implementing quality improvement projects that lead to measurable improvements in quality of care and health status. The second objective, involving as many beneficiaries, providers, and provider types as possible, will be accomplished as a result of PROs implementing a broad portfolio of successful improvement projects. The measurements for evaluating progress towards achieving objectives 3 and 4 will not be part of the evaluation strategy at this time. Due to the complexity involved in developing measures for those objectives, we will pilot test them before we make implementation decisions.

We define below the first two objectives concretely and unambiguously and we will assess each PRO's progress in achieving the objectives using explicit and quantifiable measures. We will feed back to the PROs information about their success in achieving the contract objectives. We will use this process to identify the successfully performing PROs, to learn what characteristics are associated with success, and to disseminate this information to the PRO community. We will also use this feedback process to encourage average and poorly performing PROs and to give them a mechanism by which they can gauge the success of any remedial actions they might initiate.

We will use the data reported via the Standard Data Processing System quality improvement project reporting system to evaluate each PRO's progress in achieving objectives 1 and 2 of the 5th Scope of Work contract. We reserve the right to ask for additional

information and to use alternate reporting channels should the data we require not be present in the quality improvement project reporting system.

Specifically, to assess the PRO's ability to implement quality improvement projects that result in measurable improvements, we will:

- Monitor the achievement of key project steps for all projects undertaken by the PRO. (These project steps include: documenting the baseline opportunity to improve care, intervening directly or in conjunction with appropriate health care providers to improve care, and measuring the effect of these interventions.)

• Monitor the number of projects the PRO reports as having achieved some measurable improvement.

- Assess the amount of improvement each project has achieved.

With respect to objective 2, to assess the PRO's ability to "implement quality improvement projects that involve as many beneficiaries, providers and provider types as possible", we will:

- Determine the percentage of beneficiaries who might be impacted by the project by measuring the number of beneficiaries in the State who have the targeted clinical condition and measuring the number of eligible beneficiaries who might be affected by the project.

• Determine the percentage of acute care hospitals in each State that actively collaborate with the PRO in one or more projects.

- Measure the number of other providers and practitioners who participate in the PROs' projects.

In addition to these performance measures, we may choose to use other data sources, such as surveys or focus groups, in order to assess and improve the validity of the evaluation process.

We will design a standard content and format for our evaluation reports and will issue the reports at regularly scheduled intervals. In addition, we will periodically issue special evaluation reports as new issues become pertinent.

We plan to use this evaluation system as a basis for decisions regarding future special PRO projects, awards, and competitive and noncompetitive contract renewals. At the time that each of these decisions is to be made, we will identify the pertinent criteria and use the evaluation system to determine which PROs are eligible. In addition, we will use the evaluation system to assure that the PROs' 5th Scope of Work performance does not deteriorate as their special project activities are implemented.

As the end of the 5th Scope of Work contracts approaches, we will use the

evaluation system to set a threshold for eligibility for noncompetitive renewal of the PRO contract. We are issuing the following standards for minimum performance to inform the PROs about what we consider to be a minimum level of PRO performance during the 5th Scope of Work.

II. Standards For Minimum Performance

To be eligible for a noncompetitive renewal of its 6th round contract, a PRO must meet, at a minimum, the performance standards listed below by the end of its 18th contract month. However, meeting these minimum performance standards does not guarantee a noncompetitive renewal of its contract. We will make a final decision on renewal/nonrenewal by the end of the 28th month of the 5th Scope of Work contract.

We will issue a "Notice of Intent to Non-renew the PRO Contract" letter to all PROs that do not meet the minimum performance standards by the end of their 18th contract month. A PRO will be considered to have met the minimum performance standards if:

A. The PRO initiated quality improvement projects in at least the five clinical topic areas to include acute myocardial infarction, diabetes, prevention (flu vaccination, pneumonia vaccination, or mammography), and two topic areas of a PRO's choice.

B. Each PRO quality improvement project is sufficiently broad enough in scope to involve a specified percentage of beneficiaries in the PRO's geographic area (a percentage of beneficiaries with the condition or percentage for whom the prevention service is indicated) as follows:

Topic Area	Scope (Percentage of beneficiaries involved)
Acute Myocardial Infarction	10
Diabetes	5
Prevention (flu vaccination, pneumonia vaccination, or mammography)	10
Topic of PRO's choice	10
Topic of PRO's choice	10

C. The PRO demonstrates that a sufficient number of providers in its contractually specified geographic area have actively attempted to improve care through participation in the PRO's quality improvement projects. Specifically, the PRO must have enlisted the participation of:

- At least 25 percent of all acute care hospitals; and

- One of the following:
 - * In States with a high managed care penetration (defined to include California, Florida, Oregon, Washington, Arizona, Massachusetts, New York and Pennsylvania), at least one managed care plan; or
 - * In all remaining states, at least 10 community-based practitioners.

D. A PRO will demonstrate that at least one of the five prescribed projects has achieved a measured improvement on one or more of the targeted project indicators. In other words, the PRO must demonstrate that the gap between the "expected" indicator level (for example, the YEAR 2000 goal, practice guideline, clinical control trials recommendation) and the "actual" level, as documented in the baseline measurement, will have been lessened, as shown in the project's evaluation (for example, remeasurement step).

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

III. Response to Comments

Although we are not able to acknowledge or respond to all items of correspondence individually, we will consider all written comments that we receive by the date and time specified in the DATES section of this preamble.

Authority: Sections 1102 and 1881 of the Social Security Act (42 U.S.C. 1302 and 1395rr).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 29, 1997.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 97-17234 Filed 7-1-97; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following advisory committee meeting of the National Institute of General Medical Sciences Special Emphasis Panel:

Committee Name: Trauma and Burn.

Date: July 21, 1997.

Time: 2:00 p.m.—until conclusion.

Place: The Copley Plaza Hotel, 138 St. James Avenue, Boston, MA 02116.

Contact Person: Bruce K. Wetzel, Ph.D., Scientific Review Administrator, NIGMS, Office of Scientific Review, 45 Center Drive, Room 2AS-19, Bethesda, MD 20892-6200, 301-594-3907.

Purpose: To review and evaluate program project applications.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6). Title 5 U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS])

Dated: June 26, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97-17380 Filed 7-1-97; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, the SAMHSA Reports Clearance Officer on (301) 443-8005.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the

use of automated collection techniques or other forms of information technology.

Proposed Project: 1998 National Household Survey on Drug Abuse—Revision—The National Household Survey on Drug Abuse (NHSDA) is a survey of the civilian, noninstitutionalized population of the

United States, age 12 and over. The data are used to determine the prevalence of use of cigarettes, alcohol, and illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal government agencies, and other organizations and researchers to establish policy, direct program

activities, and better allocate resources. For 1998, the core NHSDA questionnaire will remain unchanged, however several special topic modules are expected to change. The total annual burden estimate is 43,855 hours as shown below:

	No. of respondents	No. of responses per respondent	Average burden per response (hours)	Total burden (hours)
Household Screener	84,966	1	0.05	4,248
NHSDA Questionnaire	33,565	1	1.18	39,607

Send comments to Beatrice Rouse, SAMHSA Reports Clearance Officer, Room 16-105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: June 25, 1997.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.
[FR Doc. 97-17274 Filed 7-1-97; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities Under OMB Review

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301)443-8005.

The Annual Census of Patient Characteristics in State and County

Mental Hospital Inpatient Services—Revision—The Census is a complete enumeration of all State and county mental hospitals and collects aggregate information by age, gender, and diagnosis for each State on the number of additions during the year and resident patients who are physically present for 24 hours per day in the inpatient service at the end of the reporting year. First conducted in 1840, the Census has provided information throughout the years that is not available from any other sources. The Census is the primary means within the Center for Mental Health Services for assessing deinstitutionalization practices of State and county mental hospitals. The annual burden estimate is as follows:

	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Total annual burden (hours)
State Statisticians and Superintendents of State Mental Hospitals	58	1	2	116

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Virginia Huth, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

Dated: June 12, 1997.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.
[FR Doc. 97-17272 Filed 7-1-97; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities Under OMB Review

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443-8005.

Protection and Advocacy for Individuals with Mental Illness (PAIMI) Annual Program Performance Report—

Revision—The PAIMI Act (Pub. L. 99-319) authorized funds to support activities on behalf of individuals with mental illness. Recipients of this formula grant program are required by law to annually report their activities and accomplishments to include the number of individuals served, types of facilities involved, types of activities undertaken and accomplishments resulting from such activities. This summary must also include a separate report prepared by the PAIMI Advisory Council descriptive of its activities and assessment of the operations of the protection and advocacy system. The annual burden estimate is as follows:

	No. of re-spondents	No. of re-sponses per respondent	Hours per response	Total hour burden
Annual Program:				
Performance Report	56	1	37	2,072
Activities and accomplishments			(29)	(1,624)
Performance outcomes			(3)	(168)
Expense report			(2)	(112)
Budget			(2)	(112)
Priority statement			(1)	(56)
Advisory Council Report	56	1	10	560
Total				2,632

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Virginia Huth, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

Dated: June 12, 1997.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 97-17273 Filed 7-1-97; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4120-N-05]

Assessment of the Reasonable Revitalization Potential of Certain Public Housing Required by Law; Further Amendment to Timeframes

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: On September 26, 1996, the Department published a notice which implements section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996. Section 202 requires PHAs to identify certain distressed public housing developments that will be required to be replaced with tenant-based assistance if they cannot be revitalized by any reasonable means. In that eventuality, households in occupancy would be offered tenant-based or project-based assistance and would be relocated—if sufficient housing will not be maintained, rehabilitated, or replaced on the current site—to other decent, safe, sanitary, and affordable housing which is, to the maximum extent practicable, housing of their choice.

On December 26, 1996, at 61 FR 68048, the Department issued a notice which amended the timeframes that the Department set in the September 26, 1996 notice for accomplishing the standards necessary for compliance with section 202.

A March 24, 1997 notice, at 62 FR 13894, made a further amendment to the timeframes by extending the March 31, 1997 deadline for accomplishing Standard D until June 30, 1997.

This notice makes further amendments to the timeframes.

EFFECTIVE DATE: July 2, 1997.

FOR FURTHER INFORMATION CONTACT: Rod Solomon, Senior Director for Policy and Legislation, Public and Indian Housing, Room 4116, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708-0713. For hearing or speech impaired persons, this number may be accessed via TTY by contacting the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: Section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104-134, 110 Stat. 1321-279, 42 U.S.C. 14371 note) ("OCRA") requires PHAs to identify certain distressed public housing developments that will be required to be assessed. Households in occupancy would be offered tenant-based or project-based assistance (that can include other public housing units) and would be relocated—if sufficient housing will not be maintained, rehabilitated, or replaced on the current site—to other decent, safe, sanitary, and affordable housing which is, to the maximum extent practicable, housing of their choice. After residents are relocated, the distressed developments (or affected buildings) for which no reasonable means of revitalization exists will be removed from the public housing inventory.

On September 26, 1996, at 61 FR 50632, the Department published a

notice to implement section 202 of OCRA. The notice established the standards for conducting the assessments and the conversion plan. It also set forth certain timeframes for meeting those standards. The timeframes set in that notice were amended by publication of a notice in the **Federal Register** on December 26, 1996, at 61 FR 68048, in order to be equitable to all of the housing authorities to be assessed. On March 24, 1997, the Department issued another notice, at 62 FR 13894, which further amended the timeframes by extending the March 31, 1997 deadline for accomplishing Standard D until June 30, 1997.

This notice makes a further amendment to the timeframes. Based on further analysis and the public comments received on the September 26, 1996 notice, the Department will issue an interim rule which will modify substantially Standard D, as well as respond to the public comments received on the September 26, 1996 notice.

PHAs that have already prepared analyses and developed plans in accordance with the September 26, 1996 notice are invited to submit them, if they have not done so already.

The new deadlines for submissions to HUD field offices are as follows:

Accomplish Standards A to C by January 31, 1997 (was December 29, 1996).

Accomplish Standard D and E thirty (30) days after the effective date of the interim rule (was June 30, 1997).

Submit conversion plan ninety (90) days after accomplishing Standards D and E (was September 26, 1997).

Dated: June 27, 1997.

Kevin Emanuel Marchman,
Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97-17466 Filed 6-30-97; 12:13 pm]

BILLING CODE 4210-33-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Endangered Species Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

Applicant: Drs. Victor Apanius and Phillip K. Stoddard, Florida International University, Miami PRT-831198.

The applicants request authorization to take (capture, band, sample blood, and release) peregrine falcons, *Falco peregrinus*, in the Florida Keys, Monroe County, Florida, for the purpose of enhancement of survival of the species.

Written data or comments on this application should be submitted to: Regional Permit Biologist, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received by August 1, 1997.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679-7313; Fax: 404/679-7081.

Dated: June 24, 1997.
Noreen K. Clough,
Regional Director.
 [FR Doc. 97-17265 Filed 7-1-97; 8:45 am]
 BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Bureau of Indian Affairs (BIA) has submitted the proposed renewal of the information collection for Payment for Appointed Counsel in Involuntary Indian Child Custody Proceedings in State Courts, codified at 25 CFR Part 23.13, to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On February 19, 1997, BIA published a notice in the **Federal Register** (62 FR 7470) requesting public comments on the proposed information collection. The comment period ended on April 21, 1997. BIA received no comments from the public in response to the notice.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and explanatory materials may be obtained by contacting Larry Blair, Bureau of Indian Affairs (Bureau), Department of the Interior, 1849 C Street, NW, MS-4603 MIB, Washington, D.C. 20240, (202) 208-2721.

DATES: OMB is required to respond to this request within 60 days of publication of this notice on or before September 2, 1997 but may respond after 30 days. For maximum consideration, your comments should be submitted by August 1, 1997.

ADDRESSES: Your comments and suggestions on the requirements should be made directly to the Office of Management and Budget, Interior Department Desk Officer (1076-0111), Office of Information and Regulatory Affairs, Washington, D.C. 20503, (202) 395-7340. Please provide a copy of your comments to Larry Blair, Bureau of Indian Affairs, Office of Tribal Services, 1849 C St., NW, MS-4603 MIB, Washington, D.C. 20240, (202) 208-2721.

SUPPLEMENTARY INFORMATION:

I. Abstract

A state court that appoints counsel for an indigent Indian parent or Indian custodian in an involuntary Indian child custody proceeding in a state court for which appointment of counsel is not authorized by state law shall send written notice to the Bureau. The cognizant Bureau Area Director, using this information, can certify if the client in the notice is eligible to have his counsel compensated by the Bureau in accordance with the Indian Child Welfare Act, Public Law 95-608.

II. Method of Collection

The following information is collected in a notice from state courts in order to certify payment of appointed counsel in involuntary Indian child custody proceedings. The information collected and the reasons for the collection are listed below:

Information collected	Reason for collection
(a) Name, address and telephone number of attorney appointed; (b) Name and address of client for whom counsel is appointed;	(a) To identify attorney appointed as counsel/and method of contact; (b) To identify indigent party in an Indian child custody proceeding for whom counsel is appointed;
(c) Applicant's relationship to child;	(c) To determine if the person is eligible for payment of attorney fees as specified in Public Law 95-608;
(d) Name of Indian child's tribe	(d) To determine if the child is a member of a federally recognized tribe and is covered by the Indian Child Welfare Act (ICWA);
(e) Copy of petition or complaint	(e) To determine if this custody proceeding is covered by the ICWA;
(f) Certification by the court that state law does not provide for appointment of counsel in such proceedings;.	(f) To determine if other state laws provide for such appointment of counsel and to prevent duplication of effort;
(g) Certification by the court that the Indian client is indigent;	(g) To determine if the client has resources to pay for counsel;
(h) The amount of payments due counsel utilizing the same procedures used to determine expenses in juvenile delinquency proceedings;.	(h) To determine if the amount of payment due appointed counsel is based on state court standards in juvenile delinquency proceedings;
(i) Approved vouchers with court certification that the amount requested is reasonable considering the work and the criteria used for determining fees and expenses for juvenile delinquency proceedings.	(i) To determine the amount of payment considered reasonable in accordance with state standards for a particular case.

Proposed use of the information: The information collected will be used by the respective Bureau Area Director to

determine: (a) If an individual Indian involved in an Indian child custody proceeding is eligible for payment of

appointed counsel's attorney fees, (b) If any state statutes provide for coverage of attorney fees under these circumstances,

(c) The state standards for payment of attorney fees in juvenile delinquency proceedings, (d) The name of the attorney, and his actual voucher certified by the court for the work completed on a preapproved case. This information is required for payment of appointed counsel as authorized by Public Law 95-608.

III. Request for Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper performance of the functions of the BIA, including whether the information will have practical utility;
2. The accuracy of the Bureau's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the burden of the information collection on those who are to respond, including the use of appropriate automated electronic, mechanical or other forms of information technology.

IV. Data

Title of the Collection of Information: Department of the Interior, Bureau of Indian Affairs, Payment for Appointed Counsel in Involuntary Indian Child Custody Proceedings in State Courts.

OMB Number: 1076-0111.

Affected Entities: State Courts and individual Indians eligible for payment of attorney fees pursuant to 25 CFR 23.13.

Frequency of response: Once.

Estimated number of annual responses: 4.

Estimated annual reporting and record keeping burden that will result from the Reporting: 2 hours/response \times 4 respondents = 8 hours.

Recordkeeping: 1 hour/response \times 4 respondents = 4 hours.

Estimated Total Annual Burden Hours: 12 hours.

Dated: June 23, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97-17383 Filed 7-1-97; 8:45 am]

BILLING CODE 4310-02-U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

ACTION: Notice.

SUMMARY: This notice announces that the Bureau of Indian Affairs (BIA) has submitted the proposed renewal of the information collection for the Housing Assistance Application, codified at 25 CFR 256.5, to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). On February 19, 1997, BIA published a notice in the **Federal Register** (62 FR 7470) requesting public comments on the proposed information collection. The comment period ended on April 21, 1997. BIA received no comments from the public in response to the notice.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed collection of information and related form and explanatory materials may be obtained by contacting June Henkel, Bureau of Indian Affairs (Bureau), Department of the Interior, 1849 C. Street, NW, MS-4603 MIB, Washington, D.C. 20240. (202) 208-2721.

DATES: OMB is required to respond to this request within 60 days of publication of this notice on or before September 2, 1997 but may respond after 30 days. For maximum consideration, your comments should be submitted by August 1, 1997.

ADDRESSES: Your comments and suggestions on the requirements should be made directly to the Office of Information and Regulatory Affairs, Washington, D.C. 20503, (202) 395-7340. Please provide a copy of your comments to June Henkel, Bureau of Indian Affairs, Office of Tribal Services, 1849 C Street, NW, MS-4603-MIB, Washington, D.C. 20240, (202) 208-2721.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is needed to establish whether an applicant is eligible to receive services under the Housing Improvement Program (HIP) and to establish the priority order in which eligible applicants may receive services under the program.

II. Request for Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper performance of the functions of the BIA, including whether the information will have practical utility;

2. The accuracy of the Bureau's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and, 4. How to minimize the burden of the information collection on those who are to respond, including the use of appropriate automated electronic, mechanical or other forms of information technology.

III. Data

Title of the Collection of Information: Department of the Interior, Bureau of Indian Affairs, Housing Assistance Application.

OMB Number: 1076-0084

Affected Entities: Individual members of Indian tribes who are living on or near a tribally, or by law, defined service area.

Frequency of Response: Annually or less frequently, depending on length of waiting list, funding availability and dynamics of service population.

Estimated Number of Annual Responses: 3,500.

Estimated Time per Application: 1/2 hour.

Estimated Total Annual Burden Hours: 1750 hours.

Dated: June 23, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97-17384 Filed 7-1-97; 8:45 am]

BILLING CODE 4310-02-U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Use and Distribution of the White Mountain Apache Tribe Indian Judgment Funds in Docket No. 22-H Before the United States Court of Federal Claims

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the plan for the use and distribution of judgment funds awarded to the White Mountain Apache Tribe in Docket No. 22-H is effective as of April 29, 1997. Distribution of the funds in accordance with the plan shall be administered by the Special Trustee for American Indians through the Office of Trust Funds Management.

FOR FURTHER INFORMATION: Joe Weller, Office of Trust Funds Management, 505 Marquette, NW, Suite 1000, Albuquerque, NM 87102, (505) 248-5723.

SUPPLEMENTARY INFORMATION: The Act of October 19, 1973, as amended (25 U.S.C. 1402 *et seq.*), requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on December 11, 1995, in satisfaction of the award granted to the White Mountain Apache Tribe before the United States Court of Federal Claims in Docket No. 22-H. The plan for the use and distribution of the funds, including supporting documents referenced by and incorporated therein, was submitted to Congress on December 10, 1996, with letters bearing the same date. The receipt of the letters by the Senate the House of Representatives was recorded in the Congressional Record published on January 10, 1997. The plan became effective on April 29, 1997, since a joint resolution disapproving it was not enacted. The General Provisions section shall be interpreted in conjunction with currently governing regulations with reference to limitations on distribution of funds for the use/benefit of minors and legal incompetents. Such restrictions may be found at 25 CFR §§ 87.10, 115.4, and 115.5. The plan reads as follows:

Plan for the Use and Distribution of the White Mountain Apache Tribe Judgment Funds in Docket 22-H Before the United States Court of Federal Claims

The funds appropriated on December 11, 1995, in satisfaction of the judgment granted to the White Mountain Apache Tribe in Docket 22-H by the United States Court of Federal Claims, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used and distributed as herein provided:

Per Capita Aspect

Eighty percent (80%) of the funds shall be distributed in the form of per capita payments by the Secretary of the Interior (hereinafter the "Secretary") in sums as equal as possible to all tribal members born on or prior to and living on the effective date of this plan, except that individuals who have received judgment fund per capita payments while enrolled with any other tribe shall

be ineligible to participate in the distribution of Docket 22-H funds. The tribal governing body shall establish, with the approval of the Secretary, procedures and a deadline for the filing of applications for tribal enrollment. Such deadline shall not be established on a Saturday, Sunday or legal holiday.

Programming Aspect

Twenty percent (20%) of the funds, and any amounts remaining from the per capita payments provided above, shall be used to establish a perpetual and permanent White Mountain Apache Land Restoration Fund (hereinafter referred to as the "Fund"). The principal of the Fund shall never be expended. The Fund's investment income shall be used for the following types of land and water restoration projects:

1. A portion of the fund may be used for fund administration in the form of an endowment governed by a Board of Directors who would recommend projects for funding, set policy direction for the fund, and made decisions regarding scholarships and internships with preferences given to projects which use funds to match outside grants and which promote the long term recovery of Apache lands and values.

2. A permanent matching fund annually for federal, state, and private grants.

3. Restoration projects may be conducted in a variety of locations across the Reservation, including the following:

a. Riparian and cienega restoration, including fencing, development of alternative water resources for cattle and wildlife, erosion control, revegetation;

b. Rangeland restoration, including irrigation, reseeding, and fencing;

c. Ecological educational projects, including interpretive nature trails, community nature parks, curricula development for schools, and television programming;

d. Ecosystems monitoring and research projects in the area of water quality and habitat;

e. Plant and wildlife restoration, such as reintroduction of native species and elimination of exotics; and

f. Cultural and language restoration, including recording and transmitting tribal elders' knowledge of ecosystems, such as place names, herbs, plants, and animals.

4. Scholarships may be made available to tribal members who are college or university level juniors,

seniors, or graduate students majoring in natural resources fields, and special intern programs to provide tribal members with unique opportunities to learn about and work in a range of natural resource fields on the Reservation.

5. The investment income may also be used to develop and implement potential initiatives to protect and restore tribal lands and waters which emphasize the involvement of tribal elders and youth. Those initiatives may include stream and lake restoration projects; tribal youth training camp; ethnecology project; tribal ecological research institute; adopt-a-stream program for local schools; oral history project; and ecotourism development program.

General Provisions

The per capita shares of living, competent adults shall be paid directly to them. The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR, part 4, subpart D. Per capita shares of legal incompetents and minors shall be handled as provided in 25 U.S.C. 1403(b)(3).

The Secretary, in arranging for the per capita payments to be made, shall withhold sufficient shares for individuals, whose eligibility may be in question. Those shares shall be held at interest in a separate Individual Indian Money (IIM) account, pending determination of an individual's enrollment appeal. The amount of any shares not used to pay successful appellants shall be available for use in the programming aspect of this plan.

None of the funds distributed per capita or made available under this plan for programming shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of \$2,000, any Federal or federally assisted programs.

Dated: June 25, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97-17281 Filed 7-1-97; 8:45 am]

BILLING CODE 4310-02-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-913-07-1630-00]

Notice of Prohibition of Operation of Off Road Vehicles on Public Lands Without Approved Spark Arrester; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that effective immediately, no off-road vehicle may be operated on Public Lands in Idaho unless equipped with a properly installed and maintained spark arrester, the purpose of which is to prevent spark-caused wildfires. The spark arrester must bear a stamp indicating it has met either the U.S. Department of Agriculture—U.S. Forest Service standard 5100-1a or the 80-percent efficiency level standard when determined by the appropriate Society of Automotive engineers Recommended Practices J335 or J350. A spark arrester is not required when an off-road vehicle is being operated in an area which has three or more inches of snow on the ground.

FOR FURTHER INFORMATION CONTACT:

A Daniel Hughes, Special Agent-in-Charge, BLM Idaho State Office, 1387 South Vinnell Way, Boise, Idaho 83709, 208 373-4023.

SUPPLEMENTARY INFORMATION: The installation of spark arresters on off-road vehicles has been shown to be an effective preventive for exhaust spark-caused wild fires. Currently both the U.S. Forest Service and the Idaho Department of Public Lands require such devices. Failure to install a spark arrester as described above may result in a fine as authorized in 43 CFR 8340.0-7.

Definitions: (43 CFR 8340.0-5) (A) "Public Lands" mean any lands or interest in lands owned by the United States and administered by the Bureau of Land Management. (B) "Off-Road Vehicle" means any motorized vehicle capable of, or designated for, travel on or immediately over land, water, or other natural terrain, excluding: (1) Any nonamphibious registered motorboat; (2) any military, fire, emergency, or law enforcement vehicle while being used for emergency purposes; (3) any vehicle whose use is expressly authorized by the authorized officer, or otherwise officially approved; (4) vehicles in official use; and (5) any combat or

combat support vehicle when used in times of national defense emergencies.

Elena C. Daly

Acting State Director.

[FR Doc. 97-17275 Filed 7-1-97; 8:45 am]

BILLING CODE 4310-GG-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-016-1430-01; IDI-20836]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Idaho

AGENCY: Bureau of Land Management.

ACTION: Notice of realty action.

SUMMARY: The following public lands near the community of Bruneau, Owyhee County, Idaho have been examined and found suitable for lease or sale under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*):

Boise Meridian, Idaho

T. 6 S., R. 5 E.,

Sec. 26, W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$

Containing 5 acres more or less.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. Any adverse comments will be reviewed by the District Manager. In the absence of any adverse comments, the classification will become effective and the land leased to the Bruneau Rodeo Association.

EFFECTIVE DATES: The segregation is effective July 2, 1997. The classification will be effective September 2, 1997.

DATES: Comments must be submitted on or before August 18, 1997.

ADDRESSES: Comments concerning the classification, lease or conveyance should be sent to: Area Manager, Bruneau Resource Area, 3948 Development Ave., Boise, ID 83705.

FOR FURTHER INFORMATION CONTACT: Del Bale, Realty Specialist, (208) 384-3450.

SUPPLEMENTARY INFORMATION: This action is in response to an application by the Bruneau Rodeo Association to amend their current fifteen acre R&PP lease for rodeo ground purposes. This action will allow the additional five acres applied for to be used as a stock holding pen. The lands are not needed for Federal purposes and are needed by the association for additional area at

their facility for safety reasons. Lease of the lands for recreational or public purpose use would be in the public interest, and will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Any other reservation that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Dated: June 25, 1997.

Signe Sather-Blair,

Bureau Area Manager.

[FR Doc. 97-17424 Filed 7-1-97; 8:45 am]

BILLING CODE 4310-GG-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-110-6310-00-257A; GP9-0218]

Resource Management Plans, etc.: Medford District; Jackson City, Oregon

ACTION: Notice of intent to prepare a land use plan amendment.

SUMMARY: The Medford District is proposing to amend the Medford District Resource Management Plan to allow the disposal of five (5) isolated parcels of public land in Jackson County, Oregon. The five parcels total 80.97 acres.

The public, state and local governments, and other federal agencies are invited to participate in the amendment process. Identification of issues, concerns or other written comments pertaining to this notice will be accepted until August 15, 1997.

SUPPLEMENTARY INFORMATION: The proposed plan amendment would allow the sale of five parcels of public land described as follows:

Williamette Meridian, Oregon

T.36 S., R. 1 E.,

Section 6, SE $\frac{1}{4}$ SE $\frac{1}{4}$; 40.00 acres

T.37 S., R. 3 W.,

Section 1, Lot 8; 13.82 acres

T.38 S., R. 2 W.,

Section 28, Lot 1; 5.00 acres

T.38 S., R. 4 W.,

Section 25, Lot 4; 12.15 acres

T.39 S., R. 2 W.,

Section 18, NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$; 10.00 acres

These parcels are small and isolated with no legal access. The proposal is to sell the parcels to the adjoining landowners by direct sale or by modified competitive sale where there is more than one adjoining landowner. Where survey hiatuses and unintentional encroachments on public lands are discovered in the future, which meet the disposal criteria, the lands may be automatically assigned Zone 3 for disposal.

Public participation in the amendment process will include publication of this notice in the **Federal Register** and local newspapers and the sending of this notice to state and local governments, private individuals, and interested parties. Depending on the amount of public interest, a public meeting may be held in the Medford District Office.

COMMENTS: Any comments on this notice should be mailed by close of business on August 15, 1997, to the Bureau of Land Management, Medford District Office, 3040 Biddle Road, Medford, Oregon 97504.

FOR FURTHER INFORMATION CONTACT: Jan R. Miller, Realty Specialist, (541) 770-2221.

Dated: June 19, 1997.

David A. Jones,
District Manager.

[FR Doc. 97-17248 Filed 7-1-97; 8:45 am]

BILLING CODE 4310-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-040-1430-01]

Notice of Realty Action; Agricultural Lease of Public Lands, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, agricultural lease of public lands in Sublette and Lincoln Counties.

SUMMARY: The Bureau of Land Management has determined that the land described below is suitable for agricultural lease under Section 302 of the Federal Land Management Policy Act of 1976, 43 U.S.C. 1732.

Sixth Principal Meridian

T. 31 N., R. 106 W.

Section 22, NE $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 33 N., R. 109 W.

Section 21, E $\frac{1}{2}$ SE $\frac{1}{4}$.

Section 27, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ m,
S $\frac{1}{2}$ SE $\frac{1}{4}$.

T. 31 N., R. 110 W.

Section 17, SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Section 20, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$;

Section 21, W $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$;

Section 28, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$,
NW $\frac{1}{4}$ SW $\frac{1}{4}$;

Section 29, NE $\frac{1}{4}$ NE $\frac{1}{4}$.

T. 37 N., R. 110 W.

Section 33, NW $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 26 N., R. 113 W.

Section 19, Lot 1.

T. 29 N., R. 113 W.

Section 13, SW $\frac{1}{4}$ NE $\frac{1}{4}$;

Section 17, NE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$.

T. 31 N., R. 114 W.

Section 22, SW $\frac{1}{4}$ SE $\frac{1}{4}$;

Section 27, SW $\frac{1}{4}$ NW $\frac{1}{4}$;

Section 28, NW $\frac{1}{4}$ SE $\frac{1}{4}$;

These lands contain 201 acres.

FOR FURTHER INFORMATION CONTACT:

Leslie Theiss, Area Manager, Bureau of Land Management, Pinedale Resource Area, P.O. Box 768, Pinedale, WY 82941, 307-367-4358. The casefiles may be reviewed at the Pinedale Resource Area office.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to lease the above described land for haying purposes for a 3 year period on a non-competitive land use permit.

For a period of forty-five (45) days from the date of issuance of this notice, interested parties may submit comments to the Bureau of Land Management, District Manager, Rock Springs, 280 Highway 191 North, Rock Springs, Wyoming 82901. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposed realty action will become final.

Dated: June 26, 1997.

Leslie Theiss,

Area Manager.

[FR Doc. 97-17277 Filed 7-1-97; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-960-9800-12] ES-48649, Group 88,
Arkansas

Notice of Filing of Plat of Survey; Arkansas, Suspension Lifted

On Thursday, May 8, 1997, there was published in the **Federal Register**, Volume 62, Number 89, on page 25205, a notice entitled, "Notice of Filing of Plat of Survey; Arkansas, Suspended." Said notice referenced the suspension of the plat of the dependent resurvey of the north, south and east boundaries, and the subdivisional lines of Township 2 South, Range 24 West, Fifth Principal Meridian, Arkansas, accepted March 5, 1997.

The protest against the survey was withdrawn on June 13, 1997, and the suspension of this plat was hereby lifted.

Dated: June 24, 1997.

Stephen G. Kopach,

Chief, Cadastral Surveyor.

[FR Doc. 97-17249 Filed 7-1-97; 8:45 am]

BILLING CODE 4310-GJ-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Development of a Wetlands Park in Las Vegas Wash in Clark County, Nevada

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability and notice of public hearing on draft environmental impact statement (DEIS).

SUMMARY: The purpose of this action is to provide notice of the availability for review and comment, of the DEIS on potential impacts on a proposed Wetlands Park in Las Vegas Wash, Clark County, Nevada. A Public Hearing will be held to receive comments in preparation for finalizing the DEIS.

DATES AND ADDRESSES: A 60-day review period commences with the publication of this notice. Written comments may be submitted to the Regional Director, Lower Colorado Region, P.O. Box 61470, Boulder City, Nevada 89006-1470. The Public Hearing will be held at the following location: August 6, 1997—7:00 p.m., Clark County Government Center, 500 S. Grand Central Parkway, Las Vegas, Nevada 89155.

FOR FURTHER INFORMATION CONTACT: Mr. Del Kidd, Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, NV 89006-1470, telephone: (702) 293-8698. Copies of the DEIS will be available for inspection at local libraries and may be obtained at the above and following address: Department of Parks and Recreation, Clark County Government Center, P.O. Box 551741, Las Vegas, Nevada 89155-7110, telephone number 702-455-2452.

SUPPLEMENTARY INFORMATION: The proposed project is a Wetlands Park along a 7 mile reach of Las Vegas Wash in southeastern Nevada, including portions of Whitney and the City of Henderson, and unincorporated portions of Clark County, Nevada. The Park is proposed by the Clark County Department of Comprehensive Planning Parks and Recreation. Some of the lands the Park will be constructed on is administered by Reclamation. Because Reclamation lands are involved in this

proposal, National Environmental Policy Act compliance is required. Also, because Reclamation lands are involved, it was agreed that Reclamation would be the lead agency for NEPA compliance. In 1991, Nevada residents approved by ballot a statewide wildlife and park bond earmarking \$13.3 million for the wetlands park project in Las Vegas Wash.

A critical need for the Las Vegas Wash is to control erosion. Flows in the upper reaches of the Wash and its tributaries are intermittent and occur primarily during storms. Flows in the lower reaches are primarily from treated wastewater effluent. The water from these two areas ultimately is discharged Lake Mead. As urban development continues throughout the Las Vegas Valley, the amount of impervious surface area and subsequent stormwater runoff increase. The increase in wastewater flows and stormwater runoff have accelerated erosion and channelization. In the last 25 years, wetlands have been reduced to approximately 50 acres. This erosion has resulted in 4 to 5 million cubic yards of sediment being deposited in Lake Mead.

Four alternatives are considered in the DEIS: Conservation, Recreation, Full Development, Integrated Alternative. The Conservation Alternative primarily purpose is to protect and enhance wildlife habitat. The Recreation Alternative primary purpose is to create a full range of recreation activities and wildlife viewing opportunities for people of all abilities. The Full Development alternative purpose would be to develop the area as a major environmental and recreational resource that emphasizes the enhancement of natural resources, recreational development, and major facilities for education and large numbers of visitors. The Integrated Alternative (preferred alternative) would be an environmental and recreational resource emphasizing habitat enhancement, and recreational/educational facilities for visitors.

A variety of impacts were addressed; among these were the following: geology, air quality, hydrology, water quality, biological resources, land use, transportation, noise, cultural resources, health & safety, and visual resources.

There are two major areas of controversy, and these are sediment quality and water use.

Dated: June 25, 1997

Laura Herbranson,

Director, Resource Management and Technical Services.

[FR Doc. 97-17271 Filed 7-1-97; 8:45 am]

BILLING CODE 4310-94-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-360]

International Harmonization of Customs Rules of Origin

AGENCY: United States International Trade Commission.

ACTION: Request for public comments on draft proposals for chapters 85 and 90.

EFFECTIVE DATE: June 26, 1997.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (O/TA&TA) (202-205-2595), or Craig Houser, Nomenclature Analyst (202-205-2597).

Parties having an interest in particular products or HTS chapters and desiring to be included on a mailing list to receive available documents pertaining thereto should advise Diane Whitfield by telephone (202-205-2610) or by mail at the Commission, 500 E Street SW., Room 404, Washington, DC 20436. Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. The media should contact Margaret O'Laughlin in the Office of External Relations (202-205-1819).

Background

Following receipt of a letter from the United States Trade Representative (USTR) on January 25, 1995, the Commission instituted Investigation No. 332-360, International Harmonization of Customs Rules of Origin, under section 332(g) of the Tariff Act of 1930 (60 FR 19605, April 19, 1995).

The investigation is intended to provide the basis for Commission participation in work pertaining to the Uruguay Round Agreement on Rules of Origin (ARO), which has adopted along with the Agreement Establishing the World Trade Organization (WTO).

The ARO is designed to harmonize and clarify nonpreferential rules of origin for goods in trade on the basis of the substantial transformation test; achieve discipline in the rules' administration; and provide a framework for notification, review, consultation, and dispute settlement. These harmonized rules are intended to make country-of-origin determinations impartial, predictable, transparent, consistent, and neutral, and to avoid restrictive or distortive effects on international trade. The ARO provides that technical work to those ends will be undertaken by the Customs Cooperation Council (CCC) (now informally known as the World Customs Organization or

WCO), which must report on specified matters relating to such rules for further action by parties to the ARO.

Eventually, the WTO Ministerial Conference is to "establish the results of the harmonization work program in an annex as an integral part" of the ARO.

In order to carry out this work, the ARO called for the establishment of a Committee on Rules of Origin of the WTO, and a Technical Committee on Rules of Origin (TCRO) of the WCO. These Committees bear the primary responsibility for developing rules that achieve the objectives of the ARO.

A major component of the work program is the harmonization of origin rules for the purpose of providing more certainty in the conduct of world trade. To this end, the agreement contemplates a 3-year WCO program, which was formally initiated in July, 1995. Under the ARO, the TCRO is to undertake (1) to develop harmonized definitions of goods considered wholly obtained in one country, and of minimal processes or operations deemed not to confer origin, (2) to consider the use of change in Harmonized System classification as a means of reflecting substantial transformation, and (3) for those products or sectors where a change of tariff classification does not allow for the reflection of substantial transformation, to develop supplementary or exclusive origin criteria based on value, manufacturing or processing operations or other standards.

The draft U.S. proposed rules for the goods of:

Chapter 85—Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles

Chapter 90—Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof

of the Harmonized System that are being made available for public comment cover goods that are not considered to be wholly made in a single country. The rules rely largely on the change of heading as a basis for ascribing origin. Copies of the proposed revised rules will be available from the Office of the Secretary at the Commission, from the Commission's Internet home page (<http://www.usitc.gov>), or by submitting a request on the Office of Tariff Affairs and Trade Agreements voice messaging system (202-205-2592).

These proposals are intended to serve as the basis for the U.S. proposal to the

TCRO of WCO. The proposals may undergo change as proposals from other government administrations and the private sector are received and considered. Under the circumstances, the proposals should not be cited as authority for the application of current domestic law. If eventually adopted by the TCRO for submission to the Committee on Rules of Origin of the World Trade Organization, these proposals would comprise an important element of the ARO work program to develop harmonized, non-preferential country of origin rules, as discussed in the Commission's earlier notice. Thus, in view of the importance of these rules, the Commission seeks to ascertain the views of interested parties concerning the extent to which the proposed rules reflect the standard of substantial transformation provided in the Agreement.

In addition, the proposed draft rules released at this time do not contain any special provisions concerning the origin of goods classified either as unfinished articles or parts of articles and which undergo significant processing or assembly operations sufficient to result in a substantial transformation but which do not result in a change of classification. Comments are requested with respect to the extent that processing and/or assembly operations performed in those circumstances should be recognized as origin—conferring for purposes of these rules, particularly for chapters 84 through 90. Forthcoming Commission notices will advise the public on the progress of the TCRO's work and will contain any harmonized definitions or rules that have been provisionally or finally adopted.

Written Submissions

Interested persons are invited to submit written statements concerning this phase of the Commission's investigation. Written statements should be submitted as quickly as possible, and follow-up statements are permitted; but all statements must be received at the Commission within 30 days of the date of publication of this notice in the **Federal Register**, in order to be considered. Again, the Commission notes that it is particularly interested in receiving input from the private sector on the effects of the various proposed rules and definitions on U.S. exports as well as imports. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at

the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington DC 20436.

Issued: June 26, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97-17368 Filed 7-1-97; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

President's Advisory Board on Race

AGENCY: United States Department of Justice, Office of the Attorney General.

ACTION: President's Advisory Board on Race; Notice of meeting.

SUMMARY: The President's Advisory Board on Race will meet on July 14, 1997, at the White House Conference Center, 726 Jackson Place, Washington, DC. The meeting will start at 9:30 a.m. and end at approximately 3:00 p.m. Agenda items to be covered include: organizational matters for the Board and planning the work of the Board over the next several months. Expedited scheduling considerations for this initial meeting precluded the full notice period; however, timely advance notice is being provided to allow for appropriate public review and comment.

The meeting will be open to the public on a first-come, first-seated basis. Interested persons are encouraged to attend. Members of the public may submit to the contact person, any time before or after the meeting, written statements to the Board. Written comments may be submitted by mail, telegram, or facsimile, and should contain the writer's name, address and commercial, government, or organizational affiliation, if any.

FOR FURTHER INFORMATION CONTACT: Comments or questions regarding this meeting may be directed to DeDe Greene, (202) 514-4224, or via facsimile, (202) 514-1783.

Dated: June 30, 1997.

David W. Ogden,

Associate Deputy Attorney General.

[FR Doc. 97-17509 Filed 7-1-97; 8:45 am]

BILLING CODE 4410-AR-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant To The Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on June 17, 1997, a proposed Consent Decree in *United States v. Erie Coatings & Chemicals, Inc. et al.*, Civil No. 95-75842, was lodged with the United States District Court for the Eastern District of Michigan. This Consent Decree resolves claims against twenty-two (22) parties ("Settling Parties") under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.* ("CERCLA") relating to the Erie Coatings & Chemicals, Inc. Superfund Site ("Site") in Erie, Michigan.

The Consent Decree requires the twenty-two (22) Settling Parties to reimburse the Superfund in the amount of \$950,000 for the United States' past costs incurred in conducting a removal action at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer in *United States v. Erie Coatings & Chemicals, Inc. et al.*, D.J. Ref. 90-11-2-1070.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Michigan, 817 Federal Building, 231 West Lafayette, Detroit, Michigan 48226, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624-0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of \$26.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97-17246 Filed 7-1-97; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in *United States v. Hoge Lumber Company*, Civil Action No. 3:95 CV 7044 was lodged on June 9, 1997, with the United States District Court for the Northern District of Ohio (Toledo Division). The proposed partial Consent Decree settles the injunctive relief claims of Plaintiffs, the United States of America and the State of Ohio, regarding Defendant's violations at Boiler B004 at its facility in New Knoxville, Ohio, of the federally-approved State of Ohio Air Pollution Implementation Plan ("Ohio SIP"). The proposed partial settlement requires Defendant to install an Electrostatic Precipitator to control particulate matter emissions from the boiler and to meet the emissions limitation currently in its Permit to Install.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General for the

The proposed partial consent decree may be examined at the office of the United States Attorney, Kiroff, Lawrence J., Assistant United States Attorney, Northern District of Ohio, 1716 Spielbusch Avenue—Suite 305, Toledo, OH 43624; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624-0892. A copy of the proposed partial consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of \$8.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Chief, Environment and Natural Resources Division.

[FR Doc. 97-17245 Filed 7-1-97; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")

Notice is hereby given that a proposed consent decree in *United States v. Rohm and Haas Co.*, Civil Action No. 96-347P, was lodged on June 26, 1997 with the United States District Court for the District of Rhode Island. Defendant Rohm and Haas Co. was a generator of wastes containing hazardous substances which were disposed of at the Picillo Farm Site ("Site") at Coventry, Rhode Island.

The complaint filed by the United States under Sections 107(a) and 113(g)(2) of CERCLA, 42 U.S.C. 107(a) and 113(g)(2), against Rohm and Haas Co. sought unreimbursed costs incurred and to be incurred related to the cleanup of groundwater at the Site under the 1993 Record of Decision ("ROD"). Under the terms of the proposed decree, defendant will pay the United States \$4.35 million in unreimbursed past response costs relating to the performance of the Remedial Investigation/Feasibility Study pertaining to groundwater contamination and the issuance of the 1993 ROD, \$110,000 in future unreimbursed costs of oversight of implementation of the Picillo ROD, and \$69,000 for settlement of federal natural resource damage claims for resources under the trusteeship of the United States Department of Interior.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Rohm and Haas Co.*, D.J. reference #90-11-2-985A.

The proposed consent decree may be examined at the Office of the United States Attorney for the District of Rhode Island, Westminster Square Building, 10 Dorrance Street, Providence, RI 02903; Region I, Office of the Environmental Protection Agency, 90 Canal Street, Boston, Massachusetts, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please

enclose a check in the amount of \$8.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97-17311 Filed 7-1-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Development of STEP Ship Product Model Database and Translators for Data Exchange Between U.S. Shipbuilders

Notice is hereby given that, on March 31, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Intergraph Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership/project status. The parties in this venture have added a member to the project. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Avondale Industries, Inc., Avondale, LA has been added as a member of this project.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Intergraph Corporation intends to file additional written notification disclosing all changes in membership.

On September 19, 1996, Intergraph Corporation filed its original notification pursuant to Section 6(a) of the Act. This notice has not been published yet.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97-17247 Filed 7-1-97; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF LABOR

Employment and Training Administration**Unemployment Compensation for Federal Employees (UCFE) Program Forms 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 Action 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 revision and extension of the Unemployment Compensation for Federal Employees (UCFE) Handbook.

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: Written comments must be submitted to the office listed in the addressee section below on or before September 2, 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 or responses.

ADDRESSES: Written comments on this notice may be mailed or delivered to Merri Baldwin, Unemployment Insurance Service, U.S. Department of Labor, Room S-4231, Frances Perkins Building, 200 Constitution Ave., NW,

Washington, DC 20210, telephone (202) 219-7301 ext 185 (this is not a toll-free number) fax number (202) 219-8506.

SUPPLEMENTARY INFORMATION:

I. Background

The UCFE law (5 U.S.C. 8501-8509) requires State employment security agencies to administer the UCFE program in accordance with the same terms and conditions as payable under the unemployment insurance law of the State if their Federal service and Federal wages had been included as employment and wages under that State law. Each State agency must be able to obtain from the Federal agency wage and separation information from each claimant filing claims for UCFE benefits to enable them to determine his/her eligibility for benefits. The State agencies record or obtain required UCFE information on forms developed by the Department of Labor, ES-931, ES-935, and ES-934. The use of each of these forms is essential to the UCFE claims process

Information pertaining to the UCFE claimant can only be obtained from the individual's former Federal agency by using the Form ES-931, Request for Wage and Separation Information. If the claimant's former employer does not provide the information, the most feasible and effective way to obtain this information is by use of the Forms ES-935, claimant's Affidavit of Federal Civilian Service, Wages and Reason for Separation, prescribed by the Department of Labor for State agency use. Without this information, we could not adequately determine the eligibility of former Federal employees and would not be able to properly administer the program.

II. Current Actions

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) of an extension to an existing collection of information previously approved and assigned OMB control No. 1205-0179. A current inventory of 144,000 UCFE claims were filed in FY 1995 and a proposed inventory of 188,000 UCFE claims will be reported for by delayed returns of completed Form ES-931 by the employing Federal agency. This form is required to be completed in 100% of all claims. Form ES-934 is used to obtain information when missing or clarified data is needed from

a Federal agency. This form is used in about 10% of claims. Form ETA 8-32 is used to provide a 6-month summary of verification activities by each SESA of Form ES-936, Verification of Wage and Separation Information, sent to payroll offices as a result of incomplete and/or incorrect information entered on Form ES-931, Request for Wage and Separation Information. This form is used semi-annually. Form ES-939, Federal Agency Visits Report, is completed by a SESA representative, on each visit to a Federal agency installation in connection with the UCFE program. The number of times this form is used varies with each State.

Type of Review: Renewal.

Agency: Employment and Training Administration.

Title: Unemployment Compensation for Federal Employees (UCFE) Handbook.

OMB Number: 1205-0179.

Recordkeeping: The Department of Labor (DOL) does not maintain a system of records for the UCFE program. UCFE records are maintained by the SESAs acting as agents for the Federal Government in the administration of the UCFE program. The DOL Handbook.

OMB Number: 1205-0179.

Recordkeeping: The Department of Labor (DOL) does not maintain a system of records for the UCFE program. UCFE records are maintained by the SESAs acting as agents for the Federal Government in the administration of the UCFE program. The DOL procedures permit the SESAs, upon request, to dispose of UCFE records according to State law provisions, 3 years after final action (including appeals or court action) on the claim, or such records may be transferred in less than the 3-year period if microphotographed in accordance with appropriate microphotography standards.

Affected Public: State governments (State employment security agencies) and Federal government agencies.

Cite/Reference/Form/etc: Forms ES-931, ES-931A, ES-935, ES-933, ES-934, ES-936, ES-939, and ETA 8-32.

Total Respondents: 188,000.

Frequency: As needed.

Total Responses: 188,000.

Average Time per Response: .05 min.

Estimated Total Burden Hours: 28,434 hrs. or chart for multiple forms/information collections.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (mins.)	Burden (hours)
ES-931	188,000	1	188,000	.05	9,400

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (mins.)	Burden (hours)
ES-931A	43,240	1	43,240	.05	2,162
ES-935	188,000	1	188,000	.08	15,040
ES-933	3,760	1	3,760	.05	188
ES-934	20,680	1	20,608	.05	1,034
ES-936	9,400	1	9,400	.05	470
ES-939	75	1	75	1.75	131
ETA 8-32	53	2	106	.08	9
Totals			453,261		28,434

Total Burden Cost (capital/startup): 0.
Total Burden Cost (operating/maintaining): \$65,807.

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: June 26, 1997.

Grace A. Kilbane,
Director, Unemployment Insurance Service.
[FR Doc. 97-17349 Filed 7-1-97; 8:45 am]
BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

Change in Status of an Extended Benefit (EB) Period for Alaska

This notice announces a change in benefit period eligibility under the EB Program for Alaska.

Summary

The following change has occurred since the publication of the last notice regarding the State's EB status:
• May 24, 1997 Alaska's 13-week insured unemployment rate for the week ending May 24, 1997, fell below 6.0 percent and was less than 120 percent of the average for the corresponding period for the prior two years, causing Alaska to trigger "off" EB effective June 14, 1996.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the States by the U.S. Department of Labor. In the case of a State beginning an EB period, the State employment security agency will furnish a written notice of potential entitlement to each individual

who has exhausted all rights to regular benefits and is potentially eligible for Extended Benefits (20 CFR 615.13(c)(1)). In the case of a State ending an EB period, the State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits informing him/her of the EB period and its effect on the individual's right to Extended Benefits (20 CFR 615.13(c)(4)).

Persons who believe they may be entitled to Extended Benefits, or who wish to inquire about their rights under the programs, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC, on June 24, 1997.

Raymond Uhalde,
Acting Assistant Secretary of Labor for Employment and Training.
[FR Doc. 97-17350 Filed 7-1-97; 8:45 am]
BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR-97-38]

Agency Information Collection Activities; Proposed Collection; Comment Request; Forging Machines (29 CFR 1910.218(a)(2)(i) and 29 CFR 1910.218(a)(2)(ii))—Inspection Certifications

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 (PRA 95) (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 impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of the information collection requirements contained in 29 CFR 1910.218(a)(2)(i) and 29 CFR 1910.218(a)(2)(ii). The Agency 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.

DATES: Written comments must be submitted on or before September 2, 1997.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR-7-38, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-2625, 200 Constitution Avenue, NW, Washington, D.C. 20210. Telephone: (202) 219-7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219-5046.

FOR SUPPLEMENTARY INFORMATION CONTACT: Belinda Cannon, Directorate of Safety Standards Programs,

Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3605, 200 Constitution Avenue, NW, Washington, D.C. 20210, telephone: (202) 219-8161. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Theda Kenney at (202) 219-8061, ext. 100, or Barbara Bielaski at (202) 219-8076, ext. 142. For electronic copies of the Information Collection Request on the certification provisions of Forging Machines, contact OSHA's WebPage on the Internet at <http://www.osha.gov/> and click on standards.

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

The inspection certification records required in 29 CFR 1910.218(a)(2)(i) and 29 CFR 1910.218(a)(2)(ii) are necessary to assure compliance with the requirement for forging machines. They are intended to assure that the forging machines have periodic and regular maintenance checks and that guards and point of operation protection devices have scheduled and recorded inspections.

II. Current Actions

This notice requests an extension of the current Office of Management and Budget (OMB) approval of the inspection certification requirements contained in 29 CFR 1910.218(a)(2)(i) and 29 CFR 1910.218(a)(2)(ii)—Forging Machines (currently approved under OMB Control No. 1218-0210).

Type of Review: Extension.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Forging Machine (29 CFR 1910.218(a)(2)(i) and 29 CFR 1910.218(a)(2)(ii)—Inspection Certifications.

OMB Number: 1218—.

Agency Number: Docket Number ICR-97-38.

Affected Public: State of local governments; Business or other for-profit.

Number of Respondents: 27,700.

Frequency: Bi-weekly.

Average Time per Response: 0.17 hour.

Estimated Total Burden Hours: 224,868.

Total Annualized Capital/Startup Costs: \$0.

Signed at Washington, D.C., this 25th day of June 1997.

John F. Martonik,

Acting Director, Directorate of Safety Standards Programs.

[FR Doc. 97-17352 Filed 7-1-97; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 97-29; Exemption Application No. D-10345, et al.]

Grant of Individual Exemptions; Washington National Retirement Plan, et al

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Typographical Corrections.

SUMMARY: This document contains a Notice of Typographical Corrections with respect to a prior Notice of Typographical Corrections published on June 19, 1997, at 62 FR 33443 (the Prior Notice).

CORRECTION: The Prior Notice contained six(6) references to "60 FR". All such references to "60 FR" are hereby changed to read "62 FR".

In addition, the first paragraph of the third column at 62 FR 33443, relating to Prohibited Transaction Exemption 97-29, is corrected to read as follows:

FOR FURTHER INFORMATION CONTACT: Ms. Jan Broady of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Signed at Washington, D.C., this 26th day of June, 1997.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 97-17237 Filed 7-1-97; 8:45 am]

BILLING CODE 4510-29-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030-32518; License No. 37-28697-01; EA 96-246]

Apgee Corporation (Aliquippa, PA); Confirmatory Order Modifying License (Effective Immediately)

I

Apgee Corporation (Licensee) is the holder of NRC License No. 37-28697-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30. The license was initially issued on September 30, 1991, and is due to expire on October 31, 2001. The license authorizes the possession and use of a variety of radionuclides incident to the loading of sealed sources into devices prior to transfer. These devices are described in Sealed Source and Device (SSD) Registry Certificates, NR-0112-D-101-B, NR-0112-D-102-B, NR-0112-D-104-B, NR-0112-D-105-S, NR-0112-D-106-B, NR-0112-D-107-S, NR-0112-D-108-B, NR-0112-D-109-B, NR-0112-D-110-B, NR-0112-D-111-S, and NR-0112-D-112-B issued by the NRC pursuant to 10 CFR part 32. The Licensee imports devices manufactured by EG&G Berthold in Germany, performs quality assurance checks, and transfers the devices to Berthold Systems, Inc. for distribution within the U.S. to specific and general licensees. Most of the SSD Registration Certificates referenced above were originally issued on October 18, 1991. Registration Certificate NR-0112-102-B was issued on April 26, 1996, Registration Certificate NR-0112-106-B was issued on October 1, 1992, and Registration Certificate NR-0112-D-109-B was issued on February 16, 1994. Registration Certificates have no expiration date.

II

On June 11-13, 1996, during an inspection of Apgee Corporation and Berthold Systems, Inc., at their Aliquippa, Pennsylvania facility, certain apparent violations involving improper distribution of sources and devices were identified, as described in Inspection Report Nos. 030-20043/96-001, 030-21228/96-001 and 030-32518/96-001. As a result, a Confirmatory Action Letter (CAL) was issued to the Licensee on June 19, 1996, requiring the Licensee to perform a comprehensive audit of every device and its contained source currently being distributed and distributed in the past. In its response to the CAL dated July 19, 1996, the Licensee confirmed that some of the

devices manufactured by EG&G Berthold and distributed by the Licensee may have deviated from the SSD Certificates of Registration.

On July 22, 1996, the NRC issued a supplement to the CAL. The Licensee submitted further responses to the CAL and Supplement by letters dated August 12, and October 15, 1996. By letter dated October 28, 1996, the NRC requested that the Licensee provide additional information in order that the Commission could complete its assessment of the safety significance of the identified deviations. This information was submitted by the Licensee on November 27, December 4, and December 20, 1996.

By letter dated April 2, 1997, the NRC informed the Licensee that it had completed its analysis of the information submitted by the Licensee. The letter informed the Licensee that, based upon the results of the inspection and the NRC's review of the information provided, three apparent violations were identified, including: (1) Distribution of devices not in accordance with the conditions of the registration certificate or for which a certificate of registration had not been issued; (2) failure to conduct audits on a quarterly basis; and (3) failure to distribute model LB 7400 series devices with manuals that include written instructions advising the customer not to lock the device in the open position.

In an enclosure to its April 2, 1997 letter, the NRC identified 42 areas of concern regarding 11 types of devices and a number of areas for which additional information was still required. The NRC expressed safety concerns in its April 2, 1997, letter regarding the following devices, which were apparently distributed without conforming to the requirements of the applicable registration certificate: (1) LB 7400 devices with alternate sources; (2) LB 7400 devices with pneumatic actuator; (3) LB 7400 devices with carbon steel transport bolts; (4) LB 300 IPD/L devices with modified source housing lengths; (5) LB 300 IPD/L devices with new Amersham or Bebig sources; and (6) all LB AS devices.

A predecisional enforcement conference was conducted with the Licensee at the NRC Region I office on April 24, 1997, to discuss the apparent violations and the concerns identified in the NRC analysis. During the enforcement conference, the Licensee indicated that organizational weaknesses in its program led to the problems. The Licensee also acknowledged that audits of the manufacturing process performed by the Licensee were not thorough.

With regard to the six issues of particular safety concern to the NRC, the Licensee indicated that it planned to either: (1) Submit a request to amend certain SSD Registry Certificates to address changes to the devices; (2) verify that certain devices are in compliance with the current Registry Certificates; and/or (3) bring the devices into compliance with the current Registry Certificates. In the case of the LB 7400 with pneumatic actuator, the only device in the field had already been modified to comply with the Registry Certificate. The Licensee also indicated that there were no immediate safety concerns with any of the devices that were currently in the field. In addition, the Licensee agreed to provide the NRC information on those gauges where NRC analysis had determined that the information was insufficient.

III

By letter dated May 8, 1997, the NRC documented its understanding of the commitments agreed to by the licensee. The letter informed the Licensee that the NRC had determined that public health and safety required these commitments be confirmed by a Confirmatory Order Modifying License (Order), and that these commitments would be incorporated into an Order following the Licensee's written consent to them. The letter also informed the Licensee that if it consented to the issuance of this Order, it would be waiving its right to request a hearing on all or any part of the Order, and the letter requested the Licensee to sign a Hearing Waiver indicating that it agreed to such commitments and consented to the issuance of this Order. On May 19, 1997, the licensee consented to issuing this Order with the commitments, as described in Section IV below, by signing a Hearing Waiver. On May 29, 1997, in a telephone conversation between John McGrath, USNRC Region I, and G. M. Smith; Apgee Corporation, at NRC's request, agreed to an extension of the dates for the commitments identified in paragraphs "C" and "E" of this Order. Implementation of these commitments will provide enhanced assurance that sufficient resources will be applied to the Licensee's quality assurance program, and that distributed devices will comply with their SSD Registry Certificate and NRC requirements.

I find that the Licensee's commitments as set forth in Section IV of this Order are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the

public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above, and the Licensee's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, *It is hereby ordered*, effective immediately, that License No. 37-28697-01 is modified as follows:

A. With respect to the LB 7400 devices with alternative sources, within seven months of the date of this Order, Apgee shall:

1. If an amended SSD Registry Certificate is issued to allow for the longer source capsules, complete the replacement of the source holders in the devices to conform to the amended Registry Certificate; or
2. Recall the devices; or
3. Bring the devices into compliance with the current SSD Registry Certificate.

B. With respect to the LB 7400 devices with carbon steel transport bolts, within seven months of the date of this Order, Apgee shall obtain confirmation (e.g., written, telephone, visual verification, etc.) that all possessors/users of the gauges have replaced the non-galvanized bolts with the supplied/authorized galvanized replacement bolts as instructed.

C. With respect to the LB 300 IPD/L devices with modified source housing lengths, shield diameters and other changes previously identified by Apgee, by July 31, 1997, Apgee shall:

1. Complete a field inspection of all generally licensed gauges; and
2. Notify the NRC immediately of any identified deviations from the SSD Registry Certificate.

D. With respect to the LB 300 IPD/L devices with new Amersham or Bebig sources, within seven months of the date of this Order, Apgee shall:

1. If an amended SSD Registry Certificate is issued to allow for the new sources and any other changes to the device that have been identified as not being in accordance with the Registry Certificate, complete any actions needed to ensure the devices conform to the amended Registry Certificate; or
2. Recall the devices; or
3. Bring the devices into compliance with the current SSD Registry Certificate.

E. With respect to the LB AS devices, Apgee shall:

1. By July 31, 1997, recall the devices; or

2. By June 30, 1997, provide the NRC with technical justification as to the safety of the devices and as to why they should remain in the public domain. If the NRC determines that the technical justification is inadequate, Apgee shall recall all devices within 15 days of the NRC's notification or by July 31, 1997, whichever is the later date.

F. With respect to the LB 330 Belt Scale devices with increased diameter of the source capsule and spacers in the source rod, within seven months of the date of this Order, Apgee shall:

1. If an amended SSD Registry Certificate is issued to allow for the 7mm diameter source and spacers and other changes to the devices, complete any actions needed to ensure the devices conform to the amended Registry Certificate; or
2. Recall the devices; or
3. Bring the devices into compliance with the current SSD Registry Certificate.

G. Apgee shall provide, in writing, the following information to the Director, Division of Nuclear Materials Safety, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406:

1. Within 30 days of the date of this Order, the schedule for performance of the required quarterly audits. The NRC shall be notified at least 30 days in advance of any change of the scheduled audit dates.

2. Within 30 days after the completion of each audit, for a period of one year from the date of this Order, a report describing the results of the quarterly audits. In cases where the audit identifies deficiencies in which devices do not comply with the Registry Certificate, the report shall include a description of corrective action planned to ensure that commitments or requirements are met, a schedule for completion of the corrective action, and a basis as to why the NRC should not take further enforcement action for the continued failure to comply with NRC requirements.

3. Monthly status reports that include the status of all actions required by this Order.

H. If, for any reason, a date specified in the above conditions cannot be met, Apgee shall contact, in writing, Mr. A. Randolph Blough, Director, Division of Nuclear Materials Safety, at the address in Provision G above.

The Regional Administrator, Region I, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the

Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.

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

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 97-17294 Filed 7-1-97; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040-8989, License No. SMC-1559, EA 97-303]

Envirocare of Utah, Inc., Salt Lake City, UT; Confirmatory Order (Effective Immediately)

I

Envirocare of Utah, Inc., (Envirocare) is the holder of Utah License No. UT2300249 issued by the State of Utah. The State license authorizes Envirocare to transfer, receive, possess and use designated radioactive material as specified therein. The State license was most recently amended on August 16, 1996, and is currently under timely renewal status. Envirocare is also the holder of NRC License No. SMC-1559, issued by the Nuclear Regulatory Commission (NRC or Commission). The NRC license authorizes Envirocare to possess and dispose of source material as defined in 10 CFR Part 40, but does not authorize possession of Special Nuclear Material (SNM). The NRC license was issued on November 19, 1993; was most recently amended on August 7, 1996; and is due to expire on November 30, 2003.

II

NRC requirements in 10 CFR 150.10 state, in part, that any person in an Agreement State who receives or possesses SNM in quantities not sufficient to form a critical mass is exempt from the requirements for a license contained in Chapters 6, 7, and 8 of the Atomic Energy Act. 10 CFR 150.11(a) states, in part, that special nuclear material in quantities not sufficient to form a critical mass means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235.

On June 9-10, 1997, the NRC conducted an inspection of Envirocare's facility near Clive, Utah. During the inspection, the NRC identified that Envirocare had received, and had caused to be present on site, SNM in excess of the 350 gram limit defined by the formula in 10 CFR 150.11. Specifically, the inspection revealed that Envirocare had caused to be present on site more than 2,400 grams of uranium-235 that had not been disposed of.

Based on further review of Envirocare's procedures, the NRC concluded that Envirocare did not correctly account for all SNM under its control that is awaiting disposal as being in its possession, which resulted in possession of SNM in excess of the

quantities specified in 10 CFR 150.10 and 10 CFR 150.11(a), a violation of the requirement for an NRC license.

III

As a result of the NRC findings, the NRC issued to Envirocare a Confirmatory Action Letter (CAL) on June 12, 1997, which confirmed that Envirocare would take certain actions. These actions included: (1) Discontinuing receipt of SNM at its facility, except in clearly defined circumstances, until receipt of written approval by the NRC; and (2) submitting a plan to the NRC for removal, or disposal at its site by June 25, 1997, of waste materials such that the sum of all SNM remaining on site would not exceed the formula quantity prescribed by 10 CFR 150.11 and Envirocare's Agreement State license.

Envirocare submitted a plan on June 16, 1997, to NRC in accordance with these commitments. In addition, in a letter dated June 18, 1997, Envirocare requested an extension of the June 25, 1997 deadline, to August 1, 1997, with respect to achieving compliance with NRC requirements.

On June 19, 1997, representatives of Envirocare met with representatives of the NRC staff during a management meeting at the NRC headquarters office in Rockville, Maryland. During the meeting, the NRC discussed the commitments described in the CAL and proposed that Envirocare not receive any shipments of SNM pending written NRC approval, except for shipments in transit as of June 11, 1997, as provided in Paragraph IV.2 of this Order. In addition, by letter dated June 23, 1997, the NRC described to Envirocare the NRC's understanding of Envirocare's commitments, and proposed incorporating those commitments into a Confirmatory Order.

Envirocare subsequently consented to issuing this Order with the conditions, as described in Section IV below, in a waiver signed on June 25, 1997. Envirocare also agreed to waive its hearing rights. The NRC has reviewed the above conditions and concludes that implementation of these actions would provide enhanced assurance that Envirocare's program for disposal of radioactive material will be conducted safely and in accordance with NRC requirements.

I find that Envirocare's commitments as set forth in Section IV are acceptable and necessary to provide for the public health, safety, and interest. In view of the foregoing, I have determined that Envirocare's commitments should be confirmed by this Order. Based on the

above and Envirocare's consent, this Order supersedes the CAL dated June 12, 1997, and is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 53, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 70 and 150, *It is hereby ordered, effective immediately, That:*

1. Effective immediately, Envirocare shall not receive Special Nuclear Material (SNM) at its facility until four business days after compliance with Condition 4, except as described in Condition 2 below, unless Envirocare has received written authorization from the NRC. Such authorization will be based on review and approval by the NRC of Envirocare's submittal of a compliance plan for meeting the terms of the exemption granted in 10 CFR 150.10 and 150.11 relating to possession of SNM. NRC and Envirocare will meet on or before July 3, 1997, to discuss the issue of SNM possession limits. Envirocare shall submit its compliance plan no later than July 7, 1997. This condition applies to mixed and non-mixed low-level radioactive waste containing SNM.

2. Shipments of SNM enroute to the Envirocare facility as of June 11, 1997, may be received at the facility. In addition, any shipment, whether or not enroute by June 11, 1997, containing one gram or less of SNM per conveyance (single rail car or truck) may be received.

3. All SNM within the restricted area at the site, other than SNM placed within the disposal cell, shall be included in determining application of the exemption granted in 10 CFR 150.10. This condition is an interim condition and will be replaced by the compliance plan required by condition 1 above, after written approval of the compliance plan by the NRC.

4. Envirocare will submit to the NRC no later than August 4, 1997, written confirmation, under oath or affirmation, that the actions described in the disposal plan dated June 16, 1997, have been completed.

5. Any written communication submitted by Envirocare in connection with this Order shall be provided to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011-8064.

The Regional Administrator, NRC Region IV, may relax or rescind, in writing, any of the above conditions upon a showing by Envirocare of good cause.

V

Any person adversely affected by this Confirmatory Order, other than Envirocare, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, DC. 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011-8064, and to Envirocare. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 25th day of June 1997.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 97-17293 Filed 7-1-97; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-327 and 50-328]

Tennessee Valley Authority; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR-77 and DPR-79 issued to the Tennessee Valley Authority (TVA, the licensee) for operation of the Sequoyah Nuclear Plant, Units 1 and 2 located in Hamilton County, Tennessee. This action is being considered in response to a TVA amendment request dated September 26, 1996.

The proposed amendments would remove the fire protection license condition for each unit and relocate various fire protection details from the Sequoyah Technical Specifications (TSs) to the Sequoyah Fire Protection Report, which is referenced in the Sequoyah Final Safety Analysis Report (FSAR). Guidelines for relocation of fire protection details were provided in NRC Generic Letter (GL) 88-12, dated August 2, 1988. The amendments would remove fire protection requirements from the TSs in four major areas: (1) Fire detection systems, (2) fire suppression systems, (3) fire barriers, and (4) fire brigade staffing requirements.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change implements the guidance of NRC Generic Letter 86-10, "Implementation of Fire Protection Requirements," and GL 88-12, "Removal of Fire Protection Requirements from the Technical Specifications." TVA's proposed change is administrative in nature since no technical requirements are being changed. The current technical specifications associated with fire protection are removed and are relocated to the SQN FSAR. In addition, implementation of the proposed standard fire protection license condition provides assurance that any future changes to the SQN Fire Protection Program would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire. Since the technical content of the Fire Protection requirements have not changed, this amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes to the fire protection requirements in this proposed amendment are administrative in nature. Technical requirements associated with SQN's Fire Protection Systems have not been altered. Accordingly, the amendment does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The technical requirements for fire protection are relocated from the TSs to the FSAR by reference to the Fire Protection Report for Sequoyah Nuclear Plant. This report was submitted to NRC by letter dated August 30, 1996. The report contains the technical requirements for SQN's Fire Protection Program. Under TVA's proposed TS change, the operational conditions, testing and remedial action requirements, that are removed from TSs and relocated to the Fire Protection Report remain unchanged. The existing plant procedures will continue to provide the specific instructions for implementing these technical requirements. Since technical requirements are not changed, the proposed change does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the

expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 4, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an

Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to

relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 26, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County

Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

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

For the Nuclear Regulatory Commission.

Ronald W. Hernan,

Senior Project Manager, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97-17295 Filed 7-1-97; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 070-00364; License No. SNM-414]

Finding of No Significant Impact Related to Amendment of Materials (Babcock and Wilcox, Nuclear Environmental Services, Inc.), Parks Township, PA

The U.S. Nuclear Regulatory Commission is considering issuing an amendment to Materials License No. SNM-414, held by Babcock and Wilcox, Nuclear Environmental Services, Inc. (B&W or the licensee), to authorize the decommissioning of B&W's operating facility in Parks Township, PA.

Summary of Environmental Assessment

Background

B&W is the current holder of NRC Radioactive Materials License No. SNM-414 for the operational facility located in Parks Township, PA (Parks Facilities). It authorizes B&W to use byproduct material and plutonium and uranium isotopes in decontamination, packaging, storage, and shipment activities for residual contamination and waste resulting from the former Special Nuclear Material processing operations at B&W's Parks Facilities and for use in service activities involving the receipt, storage, decontamination, refurbishment, and transfer of parts and equipment contaminated with byproduct material. By letter dated January 26, 1996, B&W informed the NRC staff that it intended to decommission the Parks Facilities. On October 10, 1996, the NRC published a notice in the **Federal Register** summarizing B&W's intention to decommission the Parks Facilities and offering interested individuals with an opportunity to request a hearing on the staff's action (61 FR 53240). The staff did not receive any requests for a hearing from interested members of the public in response to the **Federal Register** Notice.

On October 24, 1995, activities associated with the adjacent Shallow

Land Disposal Area were incorporated into NRC License No. SNM-2001. Activities and property at the adjacent Shallow Land Disposal Area were not included in the NRC staff's review of the decommissioning plan for the Parks Facilities.

Proposed Action

The objective of the decommissioning project is to decontaminate and decommission the Parks Facilities to permit release for unrestricted use and termination of NRC License No. SNM-414.

To accomplish this goal B&W will perform the following decommissioning activities:

- Remove building slabs, basements, and sub-surface utilities and structures;
- Excavate soil from under buildings and other locations on the site;
- Ship excavated soil which exceeds unrestricted use limits to a licensed low-level radioactive waste disposal facility;
- Survey and backfill excavations;
- Perform a radiological survey of the site; and
- Conduct a post-remediation groundwater monitoring program.

Need for Proposed Action

The proposed action is necessary to allow B&W to remove radioactive material, attributable to licensed operations at the site, to levels that permit unrestricted use of the site and termination of NRC License No. SNM-414.

Alternatives to the Proposed Action and Impacts

Allowing the licensee to leave the facility in its current radiological condition (i.e., "No action") would constitute a violation of NRC's regulations at 10 CFR 70.38(d)1-4, which require that licensees begin decommissioning of their facility at the cessation of licensed operations. Further, the no action alternative would result in: (1) Perpetual care of the site in its current condition to prevent public access and exposure to the radiological contamination, thereby foreclosing productive uses of the site; and (2) possible off site exposure resulting from migration of the radiological contamination. In addition, allowing the licensee to leave the facility in its current radiological condition would require that NRC grant a request to extend the time period for decommissioning in NRC's regulations pursuant to 10 CFR 70.38(e), if NRC determines that the extension is not detrimental to the public health and safety and is otherwise in the public

interest. In order for a licensee's request for an extension to be considered, the licensee must submit the request to NRC not later than 30 days before notification is required (i.e., not later than 30 days after the facility reverts from "active" to "decommissioning" status). A request for an extension or alternative schedule for decommissioning may be approved, if warranted, after considering the following:

1. Whether it is technically feasible to complete the decommissioning within the 24-month period;
2. Whether sufficient waste disposal capacity is available to allow the completion of the decommissioning within the 24-month period;
3. Whether a significant volume reduction in waste requiring disposal will be achieved by allowing short-lived radionuclides to decay;
4. Whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and
5. Other site-specific factors, such as the regulatory requirements of other agencies, lawsuits, groundwater-water treatment activities, monitored natural groundwater restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

The NRC staff has reviewed the decommissioning plan for the facility and has determined that none of these factors is applicable to the decommissioning of the licensee's facility.

In addition, approval of the request must also be in the "public interest." NRC has determined that it is normally in the public's interest to have radiologically contaminated areas remediated shortly following permanent cessation of operations. NRC has stated, "When decommissioning is delayed for long periods following cessation of operations, there is a risk that safety practices may become lax as key personnel relocate and management interest wanes. In addition, bankruptcy, corporate takeover, or other unforeseen changes in company's financial status may complicate and perhaps further delay decommissioning." (59 FR 36027). In addition, waste disposal costs have, in the past, increased at rates significantly exceeding the rate of inflation and, as such, delaying remediation will result in higher costs to the public, if the government eventually assumes responsibility for the decommissioning. Therefore, in evaluating a licensee's request for an extension, NRC staff should consider whether the licensee has adequately

addressed how postponing decommissioning would be in the public's interest. For the reasons summarized above the NRC staff has determined that postponing the decommissioning of the Parks Facilities is not in the public's interest.

An alternative considered by the licensee was to install a crushing plant on site, demolish the building and process the building rubble through the crushing plant. According to the licensee, this alternative was similar to an operation successfully performed during the decommissioning of its Apollo, PA site under NRC License No. SNM-145. The crushed rubble would be sampled as it came out of the plant. Any material that exceeded the current release criteria would be shipped to a licensed low-level radioactive waste disposal facility. Material below the release criteria would remain on site and be used as fill material after soil exceeding the release criteria had been removed and shipped for disposal. The licensee abandoned this alternative for several reasons. The crushed rubble remaining on the site may have increased the radiological dose to members of the public, the cost of this alternative far exceeds the cost of the proposed action, and the overall decommissioning schedule would have been impacted. Given these considerations, NRC staff has not further evaluated this alternative.

Finding of No Significant Impact

The NRC staff has prepared an Environmental Assessment summarizing the results of the NRC staff's review of the licensee's final decommissioning plan. Based on the NRC staff's evaluation of B&W's final decommissioning plan, it was determined that the proposed decommissioning can be carried out in a manner that is in compliance with NRC's public and occupational dose limits, effluent release limits, and residual radioactive material limits. As a result, the approval of the proposed action (i.e., decommissioning of the Parks Facilities in accordance with the commitments in NRC License No. SNM-414 and the final decommissioning plan) will not have a significant effect on the quality of the human environment. Based on this assessment, the Commission has determined not to prepare an environmental impact statement for the proposed action.

Further Information

The Environmental Assessment and other documents related to this proposed action are available for public

inspection and copying at the Commission's Public Document Room, located at 2120 L Street NW., Washington DC. 20555 and NRC's Local Public Document Room located at the Apollo Memorial Library, 219 North Pennsylvania Avenue, Apollo, PA 15613.

For further information, contact Dominick Orlando, US NRC, Mailstop T-8F37, Washington, DC 20555-001, telephone (301) 415-6947.

Dated at Rockville, Maryland, this 24th day of June, 1997.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97-17296 Filed 7-1-97; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Monday, June 30, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Monday, June 30

9:00 a.m. Affirmation Session (Public Meeting) A: Louisiana Energy Services Petitions for Review of LBP-97-8 (May 1, 1997)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415-1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at:

<http://www.nrc.gov/SECY/smj/schedule.htm>

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn. Operations Branch, Washington, D.C. 20555 (301-415-1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an

electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: June 27, 1997.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 97-17461 Filed 6-30-97; 10:49 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 9, 1997, through June 20, 1997. The last biweekly notice was published on June 18, 1997 (62 FR 33117).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this

proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By August 1, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714

which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner

must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for

public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of amendment request: May 6, 1997.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3/4.7.5, "Ultimate Heat Sink," and the associated bases to support steam generator replacement and to incorporate recent Ultimate Heat Sink (UHS) design evaluations. The replacement steam generators have a larger primary side volume which results in a larger mass/energy release to the containment in the event of a loss-of-coolant accident (LOCA), and a corresponding increase in the heat load to the UHS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

TS 3/4.7.5 establishes the operating requirements for the UHS. Operation of the UHS within its design basis ensures the following: (1) Sufficient cooling capacity is available for continued operation of safety related equipment during normal and accident conditions and (2) adequate inventory is available to provide a 30-day cooling water supply to safety related equipment. Design analyses supporting the proposed TS changes provide full qualification of the UHS.

A loss of off site power (LOOP) coincident with a loss of coolant accident (LOCA), designated a LOOP/LOCA, on one unit, in conjunction with the non-accident unit proceeding to an orderly shutdown and cooldown from maximum power using normal operating procedures, remains the limiting design basis event for the UHS basin temperature.

The proposed changes to the UHS Limiting Condition for Operation for basin temperature and the number of fans running do not, in themselves, factor into any initiating event for Updated Final Safety Analysis Report (UFSAR) Chapter 15 accidents and, consequently, do not increase the probability of occurrence for these previously evaluated accidents.

The UHS plays a vital role in mitigating the consequences of any accident or transient. The proposed changes will ensure that the

minimum conditions necessary for the UHS to perform its design functions will always be met. Engineering calculations demonstrate that the SX [essential service water] pump discharge design temperature limit of 100°F, which was assumed as an initial input for the accident analyses, is preserved.

Consequently, the proposed changes to the number of cooling tower fans required to be running in high speed relative to the SX pump discharge temperature do not increase the consequences of any accident previously evaluated.

The two unit plant trip from full power with the loss of normal auxiliary feedwater (AF) supply source has been shown to be more limiting than the LOOP/LOCA scenario for UHS makeup and volume considerations.

The proposed changes to the UHS LCO for minimum basin water level do not, in themselves, factor into any initiating event for the UFSAR Chapter 15 accidents and, consequently, do not increase the probability of occurrence for these previously evaluated accidents.

The proposed changes to increase the minimum basin water levels ensure there is a sufficient volume of water in the UHS basin at all times. With these proposed changes, the UHS will perform its design function for the required 30 days, and the consequences of any accident previously evaluated are not increased.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The supporting analyses for the revised TS 3/4.7.5 do not involve a new or different kind of accident from any accident previously evaluated. The proposed limits on SX basin minimum water level, maximum basin temperature, and the number of fans operating are within the design capabilities of the UHS, and ensure that the UHS will always be in a condition to perform its design function in the event of an accident or transient. New and revised analyses which support the requested TS changes ensure the full qualification of the UHS. The UHS will not be operated in a different manner such that the possibility of a new or different kind of accident would be created. Consequently, these changes do not create the possibility of a new or different kind of accident from those previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed limits on SX basin minimum water level and maximum temperature are based on the results of new and revised design analyses which ensure that the margin of safety is not reduced. Required operator actions with appropriate times are incorporated into the analyses. The new limits on temperature and volume will ensure that, under the most limiting accident or transient scenario, cooling water from the basin will meet the accident analyses SX design temperature limit of 100 degrees Fahrenheit and will ensure that adequate inventory is available to provide a 30-day cooling water supply to safety related equipment. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room

location: Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: June 12, 1997.

Description of amendment request:

The proposed license amendment request would change the licensee's name from "Duke Power Company" to "Duke Energy Corporation" in the facility operating licenses for the Catawba, McGuire, and Oconee nuclear stations as a result of a corporate merger of Duke Power Company with PanEnergy Corporation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. These LARs (license amendment requests) involve an administrative change only. The Oconee, McGuire, and Catawba FOLs (Facility Operating Licenses) are being changed to reference the new corporate name of the licensee. No actual plant equipment or accident analyses will be affected by the proposed changes. Therefore, these LARs will have no impact on the possibility of any type of accident: new, different, or previously evaluated.

(2) Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. These LARs involve an administrative change only. The Oconee, McGuire, and Catawba FOLs are being changed to reference the new corporate name of the licensee. No actual plant equipment or accident analyses will be affected by the proposed changes and no failure modes not bounded by previously evaluated accidents will be created. Therefore, these LARs will have no impact on the possibility of any type of accident: new, different, or previously evaluated.

(3) Will the change involve a significant reduction in a margin of safety?

No. Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel and fuel cladding, Reactor Coolant System pressure boundary, and containment structure) to limit the level of radiation dose to the public. These LARs involve an administrative change only. The Oconee, McGuire, and Catawba FOLs are being changed to reference the new corporate name of the licensee.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room

location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. Paul R. Newton, Legal Department (PB05E), Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: Herbert N. Berkow.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: June 12, 1997

Description of amendment request:

The proposed license amendment request would change the licensee's name from "Duke Power Company" to "Duke Energy Corporation" in the facility operating licenses for the Catawba, McGuire, and Oconee nuclear stations as a result of a corporate merger of Duke Power Company with PanEnergy Corporation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. These LARs (license amendment requests) involve an administrative change only. The Oconee, McGuire, and Catawba FOLs (Facility Operating Licenses) are being changed to reference the new corporate name of the licensee. No actual plant equipment or accident analyses will be affected by the proposed changes. Therefore, these LARs will have no impact on the possibility of any type of accident: new, different, or previously evaluated.

(2) Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. These LARs involve an administrative change only. The Oconee, McGuire, and Catawba FOLs are being changed to reference the new corporate name of the licensee. No actual plant equipment or accident analyses will be affected by the proposed changes and no failure modes not bounded by previously evaluated accidents will be created. Therefore, these LARs will have no impact on the possibility of any type of accident: new, different, or previously evaluated.

(3) Will the change involve a significant reduction in a margin of safety?

No. Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel and fuel cladding, Reactor Coolant System pressure boundary, and containment structure) to limit the level of radiation dose to the public. These LARs involve an administrative change only.

The Oconee, McGuire, and Catawba FOLs are being changed to reference the new corporate name of the licensee.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, North Carolina 28223-0001.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: Herbert N. Berkow.

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: June 12, 1997.

Description of amendment request: The proposed license amendment request would change the licensee's name from "Duke Power Company" to "Duke Energy Corporation" in the facility operating licenses for the Catawba, McGuire, and Oconee nuclear stations as a result of a corporate merger of Duke Power Company with PanEnergy Corporation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. These LARs (license amendment requests) involve an administrative change

only. The Oconee, McGuire, and Catawba FOLs (Facility Operating Licenses) are being changed to reference the new corporate name of the licensee. No actual plant equipment or accident analyses will be affected by the proposed changes. Therefore, these LARs will have no impact on the possibility of any type of accident: new, different, or previously evaluated.

(2) Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. These LARs involve an administrative change only. The Oconee, McGuire, and Catawba FOLs are being changed to reference the new corporate name of the licensee. No actual plant equipment or accident analyses will be affected by the proposed changes and no failure modes not bounded by previously evaluated accidents will be created. Therefore, these LARs will have no impact on the possibility of any type of accident: new, different, or previously evaluated.

(3) Will the change involve a significant reduction in a margin of safety?

No. Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel and fuel cladding, Reactor Coolant System pressure boundary, and containment structure) to limit the level of radiation dose to the public. These LARs involve an administrative change only. The Oconee, McGuire, and Catawba FOLs are being changed to reference the new corporate name of the licensee.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Attorney for licensee: J. Michael McGarry III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036.

NRC Project Director: Herbert N. Berkow.

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: May 30, 1997.

Description of amendment request: Technical Specification (TS) Surveillances 4.5.2.f and 4.6.2.2.b require the periodic flow testing of the recirculation spray system pumps. The proposed amendment would change the surveillances by replacing the pump differential acceptance criteria with a pump acceptance curve.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed revision in accordance with 10CFR50.92 and has concluded that the revision does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not satisfied. The proposed revision does not involve [an] SHC because the revision would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed changes to Technical Specification Surveillances 4.5.2.f and 4.6.2.2.b will modify the surveillance acceptance criteria to require that each Recirculation Spray System (RSS) pump develop a differential pressure greater than or equal to the pump performance curve contained on Figure 3.5-1 when tested according to the requirements of Specification 4.0.5. Because it is undesirable to test the pumps on recirculation flow to the RWST [reactor water storage tank], pump testing will now be performed at lower flows than previously performed. Consistent with Specification 4.0.5, one point on Figure 3.5-1 will be used to meet the proposed surveillance acceptance criteria. Periodically comparing the reference differential pressure developed at this reduced flow detects trends that might be indicative of pump degradation. The proposed changes are consistent with RSS pump design criteria and performing surveillance testing does not significantly increase the probability of an accident previously evaluated.

The proposed changes to modify the surveillance acceptance criteria to require that each RSS pump develop a differential pressure greater than or equal to the pump performance curve provides the necessary assurance that the pumps will function as required in previous evaluations and does not significantly increase the consequence of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the surveillance acceptance criteria of the RSS pumps does not change the operation of the Recirculation Spray System or any of its components during normal or accident evaluations.

Therefore, the proposed revision does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes will change the surveillance requirements needed to demonstrate operability for each of the RSS pumps. Technical Specification Surveillances 4.5.2.f and 4.6.2.2.b will now require that each pump meet its acceptance criteria in accordance with Figure 3.5-1

when tested according to the requirements of Specification 4.0.5. Figure 3.5-1 will be inserted into the Technical Specifications.

The new acceptance criteria for the RSS Technical Specification surveillance is above the accident analysis curve and is more restrictive than the current inservice inspection curve in the accident analysis region. The proposed TS curve has been degraded in accordance with the recommendations of ASME XI (American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section XI) for the full range of flow and will be used to meet the TS requirements.

Therefore, the proposed revision does not involve a significant reduction in a margin of safety.

In conclusion, based on the information provided, it is determined that the proposed revision does not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

NRC Deputy Director: Phillip F. McKee.

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: June 13, 1997.

Description of amendment request: The proposed amendment would modify Technical Specification (TS) Surveillance Requirement 4.4.1.3.3 to be consistent with the requirements of TS 3.4.1.3. Specifically, the change would bring TS Surveillance 4.4.1.3.3 into agreement with TS 3.4.1.3 that would require at least two reactor coolant system loops to be operable and in operation when the reactor trip system breakers are closed during Mode 4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed revision in accordance with 10CFR50.92 and

has concluded that the revision does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not satisfied. The proposed revision does not involve (an) SHC because the revision would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed change to Technical Specification Surveillance 4.4.1.3.3 is being made to bring Technical Specification Surveillance 4.4.1.3.3 into agreement with Technical Specification 3.4.1.3 that requires at least two reactor coolant system loops to be operable and in operation when the reactor trip system breakers are closed during Mode 4. This requirement was incorporated into Technical Specification 3.4.1.3 in Amendment 7. This change to the surveillance does not alter the design, operation, maintenance or testing of the associated systems as previously analyzed.

Therefore, the proposed revision does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change does not introduce any new failure modes or malfunctions, since the changes only bring Surveillance 4.4.1.3.3 in agreement with Technical Specification 3.4.1.3. Additionally, the proposed change does not alter the operation of the reactor coolant system during normal or accident conditions.

Therefore, the proposed revision does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change to Technical Specification Surveillance 4.4.1.3.3 will reword the surveillance to ensure compliance with Technical Specification 3.4.1.3.

Technical Specification 3.4.1.3 was changed in Amendment No. 7 to address the closure of the Reactor Trip System breakers in Mode 4. As written, Technical Specification Surveillance 4.4.1.3.3 does not adequately ensure compliance with Technical Specification 3.4.1.3. This proposed change is necessary to bring Surveillance 4.4.1.3.3 in agreement with Technical Specification 3.4.1.3 as it was amended.

Therefore, the proposed revision does not involve a significant reduction in a margin of safety.

In conclusion, based on the information provided, it is determined that the proposed revision does not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center,

Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.
NRC Deputy Director: Phillip F. McKee.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of amendment requests: May 7, 1997, as supplemented May 30, 1997.

Description of amendment requests:

The proposed amendments would remove from the Technical Specifications certain limitations on crane operations in the spent fuel pool enclosure relating to spent fuel pool special ventilation system operability.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment[s] will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Operation of the Prairie Island plant in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes do not involve a physical modification to the plant.

The spent fuel pool special ventilation system is provided to mitigate the consequences of a design basis fuel handling accident which involves dropping a spent fuel assembly directly onto a stored spent fuel assembly. Spent fuel pool special ventilation system performance and environmental consequences were based on the conservative assumption that all fuel rods in one fuel assembly fail. However, evaluation of the mechanical performance of spent fuel stored in the spent fuel racks demonstrated that no fuel rods fail.

The proposed changes will continue to require the spent fuel pool special ventilation system to be operable to mitigate the consequences of a fuel handling accident in accordance with its original design intent. Spent fuel pool special ventilation system operability is not required in conjunction with crane operations. Heavy loads in the spent fuel pool enclosure are handled (1) by single-failure-proof cranes with rigging and plant procedures which implement Prairie Island commitments to NUREG-0612 ["Control of Heavy Loads at Nuclear Power Plants"] or (2) over spent fuel pool protective

covers as described in the Prairie Island USAR [updated safety analysis report]. In accordance with the requirements of NUREG-0612, use of a single-failure-proof crane with rigging and procedures which implement the requirements of NUREG-0612 assures that the potential for a load drop is extremely small and the effects of heavy load drops are not considered. Spent fuel pool covers prevent dropped loads from falling into the spent fuel pool. Thus, there are no radiological releases resulting from handling heavy loads in the spent fuel pool enclosure for which spent fuel pool special ventilation system operability would be required. Therefore, these changes do not involve a significant increase in the probability or consequences of the fuel handling accident previously evaluated.

2. The proposed amendment(s) will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed Technical Specification changes continue to require the spent fuel pool special ventilation system to be operable during handling of irradiated fuel as originally designed. Heavy loads in the spent fuel pool enclosure are handled by means which assure that the potential for a dropped load is extremely small (through use of single-failure-proof cranes with rigging and plant procedures which implement Prairie Island commitments to NUREG-0612) or prevent dropped loads from falling into the spent fuel pool (through use of spent fuel pool protective covers as described in the USAR). Thus, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes, in themselves, do not introduce a new mode of plant operation, surveillance requirement or involve a physical modification to the plant.

The proposed changes do not alter the design, function, or operation of any plant components and therefore, no new accident scenarios are created. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated would not be created by these amendments.

3. The proposed amendment(s) will not involve a significant reduction in the margin of safety.

The proposed amendment(s) will continue to require the spent fuel pool special ventilation system to operate following a fuel handling accident as originally designed. Heavy load crane operations in the spent fuel pool enclosure are handled (1) by single-failure-proof cranes with rigging and plant procedures which implement Prairie Island commitments to NUREG-0612; or (2) over spent fuel pool protective covers as described in the Prairie Island USAR. Provision of single-failure-proof equipment and compliance with the other requirements of NUREG-0612 provides an equivalent margin of safety to that which would be demonstrated by analysis of the radiological effects of dropped loads. Use of protective covers has been previously reviewed and approved by the NRC. Therefore, th[ese] proposed amendment(s) (do) not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: John N. Hannon.

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: May 9, 1997.

Description of amendment request: The proposed change revises the Peach Bottom Atomic Power Station, Units 2 and 3 technical specifications to extend the interval for replacing the primary containment purge and exhaust valve inflatable seals.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS (technical specification) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Revising SR [surveillance requirement] 3.6.1.3.16 to replace the inflatable seals for the Primary Containment purge and exhaust valves from every 48 months to every 96 months will not involve a significant increase in the probability or consequences of an accident previously evaluated. The valves will continue to be leak tight throughout the lifetime of the plant. This change will not result in increased onsite or offsite radiological dose. This change will result in reduced occupational dose exposure.

This submittal does not propose any change to the existing requirements contained in the PBAPS [Peach Bottom Atomic Power Station] Technical Specifications for leak testing of the Primary Containment purge and exhaust valves per 10 CFR 50, Appendix J, "Primary Reactor Containment Leakage Testing For Water-Cooled Power Reactors." This continued testing will assure the leak tightness of the purge and exhaust valves.

The T-ring materials (Ethylene Propylene) has been found to withstand normal and accident thermal exposures for the design life of the plant based on thermal aging analysis. The elastomer seat material will provide acceptable seat tightness when exposed to a total integrated radiation dose of 10E7 rads based on information provided by EPRI [Electric Power Research Institute] in technical report NP-2129, entitled "Radiation Effects on Organic Material in Nuclear Plants." The radiation dose of 10E7 rads bounds the design basis accident dose to which these valves would be exposed. The radiation dose these valves are exposed to during normal operation is insignificant as compared to the accident dose. Based on this, radiation effects from the additional exposure resulting from the extended replacement frequency will not adversely impact the T-ring seat material.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Revising SR 3.6.1.3.16 to replace the inflatable seals for the Primary Containment purge and exhaust valves from every 48 months to every 96 months does not create the possibility of a new or different kind of accident from any accident previously evaluated. This change does not involve any physical changes to a plant structure, system, or component (SSC) which could act as an accident initiator. The design, function, and reliability of the Primary Containment purge and exhaust valves are also not impacted by this change. This activity does not adversely influence any equipment, which is required to be maintained operable for the prevention or mitigation of accidents or transients. Furthermore, implementation of the proposed changes will not adversely affect the manner in which plant SSC are operated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

No margins of safety are reduced as a result of the proposed TS changes. The proposed changes do not alter the intended operation of plant structures, systems, or components utilized in the mitigation of accidents or transients. The operating experience of these valves and the testing performed in accordance with 10 CFR 50, Appendix J provides a high level of confidence in the ability of these valves to perform their intended safety function with respect to valve leak tightness.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for Licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General

Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.
NRC Project Director: John F. Stolz.

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: May 23, 1997.

Description of amendment request: The proposed change revises the Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3 Technical Specifications (TS) to exclude the measured Main Steam Isolation Valves (MSIVs) leakage from the total Type B and C local leak rate test (LLRT) results.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Excluding the MSIV leakage from the total Type B and C LLRT results does not involve any change in the safety function or method of operation of any plant component, system, or structure. No new accident initiators or failure modes are created as a result of this change. Therefore, this change will not result in an increase in the probability of an accident previously evaluated.

The MSIV leakage release pathway is of significance only for the evaluation of the design basis LOCA (loss-of-coolant accident) as described in the PBAPS, Units 2 and 3 UFSAR (updated final safety analysis report). The doses effectively reflected in the PBAPS, Units 2 and 3 UFSAR reflect the impact of a 0.635% Primary Containment volume per day Primary to Secondary Containment leakage, plus a 0.145% Secondary Containment bypass leakage to the condenser. Since accident consequences already reflect both leakage release pathways, the consequences of the design basis LOCA are not increased.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The MSIVs provide the means for mitigating the radiological consequences of an accident. Revising Section 5.5.12 of the PBAPS, Units 2 and 3 TS to exclude the measured MSIVs leakage from the total Type B and C LLRT results has no effect on accident initiators which lead to a new or different kind of accident. This change will not involve any changes to plant systems, structures, or components which could act as new accident initiators. The design, function, and reliability of the MSIVs are also not impacted by this change. Therefore, this

change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

No margins of safety are reduced as a result of this change to the TS. No safety limits will be changed as a result of this TS change. The MSIVs will continue to perform their intended safety function. The combined dose rates from the two release paths (i.e., Primary to Secondary Containment leakage and Secondary Containment bypass leakage) are unchanged as a result of this change, and are within the limits of 10 CFR 100, and in conformance with NUREG-0737 post-accident access requirements.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for Licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Project Director: John F. Stolz

Tennessee Valley Authority, Docket No. 50-390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: March 27, May 28, and June 4, 1997.

Description of amendment request: The proposed amendment would revise the technical specifications (TSs) as follows:

Part 1—Boron Concentration Changes

The Cycle 2 core design for Watts Bar (WBN) will include a longer fuel cycle and more highly enriched fuel (from 3.1 percent to 3.7 percent). To accommodate this design, the refueling water storage tank (RWST) and accumulator boron concentrations will be increased to provide enough boron in the sump to meet the large break loss-of-coolant accident (LBLOCA) requirement for sump boron concentration. This requirement is that during a LBLOCA, the core will remain subcritical from boron provided by the emergency core cooling system (ECCS), which takes suction from the RWST and containment sump.

The increase in RWST (TS 3.5.4) and accumulator (TS 3.5.1) boron concentrations will be from a range of 2000–2100 ppm to 2500–2700 ppm and

from 1900–2100 to a range of 2400–2700 ppm, respectively. Associated changes are proposed for TS Bases B 3.5.4.

Part 2—Safety Limits, Instrumentation, and Reactor Coolant System

Watts Bar has experienced hot leg temperature fluctuations, including random spikes, which decrease the operating margin to both the overtemperature delta temperature (OTDT) and overpower delta temperature (OPDT) reactor trip setpoints. These fluctuations have caused, in some cases, the plant to experience OT alarms during steady-state operation since the temperature fluctuations reduced the operating margin. To mitigate the temperature fluctuations and associated alarms, the OTDT and OPDT setpoints have been enhanced to increase the operating margin associated with these trip functions.

In addition, Watts Bar has decided to reduce the plant thermal design flow from 97,500 gpm per loop to 93,100 gpm per loop (total of 390,000 gpm) to accommodate 10 percent steam generator tube plugging and a 2 percent reduction in thermal design flow (RTDF).

Also, Watts Bar has decided to implement a tolerance of 0.6°F for the TS Surveillance for indicated differential temperature and 1 °F tolerance for the surveillance of T_{AVG} (identified as T prime and T double prime in the TSs). The use of this tolerance will help to determine whether the indicated DT and T_{AVG} should be left as is, or rescaled during the surveillance. These tolerances have been incorporated as biases into the uncertainty analysis for the affected protection system functions. These functions include the OTDT, OPDT and vessel DT equivalent to power (used in the steam generator low-low water level trip functions). As a result of implementing these biases into the protection system functions (and the changes to the OTDT/OPDT setpoints and reduced TDF), the Allowable Value in the TSs for the OTDT, OPDT and vessel DT equivalent to power functions have been modified.

The licensee's safety evaluation has been prepared to allow for plant operation during Cycle 2 with the revised OTDT and OPDT setpoints, the thermal design flow of 93,100 gpm and the tolerances for indicated differential temperature, T prime and T double prime. To obtain sufficient departure from nucleate boiling (DNB) margin for the OTDT/OPDT setpoint, reduced TDF and Cycle 2 design features, it was necessary to implement the RTDF. The

RTDP program changes the uncertainty treatment for core power, T_{AVG} , pressurizer pressure, and RCS flow. These uncertainties have been incorporated, where applicable, into the safety analyses addressed in the Safety Evaluation.

The following TSs will be changed to incorporate the OTDT/OPDT margin enhancement, thermal design flow of 93,100 gpm and tolerances for indicated differential temperature, T prime and T double prime.

The Reactor Core Safety Limits (TS Figure 2.1.1-1 of the licensee's application) have been modified to improve DNB margin. The Allowable Values for the Vessel DT Equivalent to Power input to Steam Generator Water Level Low-Low in the Reactor Trip System Instrumentation (Table 3.3.1-1, page 4) and Engineered Safety Feature Actuation System (ESFAS) Instrumentation (Table 3.3.2-1, page 4), have been changed to reflect the addition of a 0.6°F tolerance to the measurement of indicated differential temperature.

The revised reactor core safety limits lines allow for changes in the OTDT/OPDT reactor trip setpoints to improve operating margin. The allowable values for these functions in the Reactor Trip System Instrumentation (TS Table 3.3.1-1) have changed as a result of including tolerances for indicated differential temperature, T prime and T double prime in the uncertainty analysis. Several setpoint gains and time constants have been modified to enhance plant operation.

Regarding the RCS Pressure, Temperature and Flow DNB Limits (Section 3.4.1), the RCS average temperature limit has been revised to account for the change in uncertainty from implementing RTDP. The total RCS flow has been modified to account for the reduced thermal design flow from 97,500 gpm to 93,100 gpm. The total flow value in the Technical Specification includes an allowance for instrument uncertainty.

Associated changes have been made to the following TS Bases sections: Reactor Core Safety Limits (Section B 2.1.1); Nuclear Enthalpy Rise Hot Channel Factor (Section B 3.2.2); Reactor Trip System Functions OTDT, OPDT and Steam Generator Water Level Low-low (Vessel Delta T Equivalent to Power) (Section B 3.3.1); Reactor Trip System Functions—Reactor Coolant Flow—Low (Single Loop and Two Loops) (Section B 3.3.1); ESFAS Instrumentation (Section B 3.3.2); RCS Pressure, Temperature, and Flow DNB (Section B 3.4.1).

Part 3—Addition To Core Operating Limit Report Methodologies

The amendment would revise the Core Operating Limits Report (COLR) methodologies listed in TS 5.9.5.b to add the reference to the Westinghouse report WCAP-12610-P-A, "Vantage + Fuel Assembly Reference Core Report." The report reflects use of fuel assemblies in Cycle 2 using ZIRLO fuel rod cladding.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Part 1—Boron Concentration Changes

The Nuclear Regulatory Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92 (c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility, in accordance with the proposed amendment, would not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated;

The RWST and accumulator boron concentrations do not affect any initiating event for accidents currently evaluated in the FSAR [final safety analysis report]. The increased concentrations will not adversely affect the performance of any system or component which is placed in contact with the RWST or accumulator water. The integrity and operability of the stainless steel surfaces in the RWST, accumulator and affected NSSS [nuclear steam supply system] components/systems will be maintained. The decrease in solution pH is small and will not degrade the stainless steel. Also, the integrity of the Class 1E instrumentation and control equipment will be maintained since the lower sump pH, resulting from the increased boron concentrations, is still within the applicable equipment qualification [EQ] limits. These limits are set to preclude the possibility of chloride induced stress corrosion cracking and assure that there is no significant degradation of polymer materials. The design, material and construction standards of all components which are placed in contact with the RWST and accumulator water remain unaffected.

For the evaluations, the consequences of an accident previously evaluated in the FSAR will not be increased. There is no increase in the LOCA accident consequences. The changes in the concentrations increase the amount of boron in the sump during a LOCA. The increased boron in the sump is sufficient to maintain the core in a subcritical condition during a LOCA. Also, a revised hot leg switchover time has been calculated and will be implemented in the plant EOPs (emergency operating procedures). Thus,

there will be no boron precipitation in the core during a LOCA.

Furthermore, there is no increase in consequences of the non-LOCA events. The concentration changes are a benefit to the SLB (steam line break) at full power analysis due to the reduction in power during the accident. The loss of normal feedwater event is not sensitive to changes in the RWST and accumulator boron concentrations. The concentration changes do not affect the inadvertent operation of ECCS analysis since the minimum DNBR (departure from nucleate boiling ratio) occurs at the event initiation, and the concentration changes do not affect the analysis trend.

Finally, the concentration changes are a benefit for the SLB M&E (mass and energy) release and SGTR (steam generator tube rupture) events since the increased boron increases the available shutdown margin for these events. In addition, the increase in RWST and accumulator boron concentrations and subsequent slight decrease in containment sump and a spray pH does not impact the LOCA dose evaluation since pH is not a function of radionuclide concentration. Therefore, the present analysis remains bounding. Also, the slight decrease in sump, core and spray fluid pH has been evaluated to not impact the corrosion rate (and subsequent generation of Hydrogen) of Aluminum and Zinc inside containment significantly that the present analysis does not remain bounding. Further, the decreased sump, core and spray fluid pH has been evaluated to not affect the amount of hydrogen generated from the radiolytic decomposition of the sump and core solution. In view of the preceding, it is concluded that the proposed change will not increase the consequences of an accident previously evaluated in the FSAR.

(2) or create the possibility of a new or different kind of accident from any accident previously evaluated;

The changes to the RWST and accumulator concentrations do not cause the initiation of any accident nor create any new credible limiting single failure. The changes do not result in a condition where the design, material, and construction standards of the RWST and accumulators and other potentially affected NSSS components, that were applicable prior to the changes, are altered. * * * *

The changes do not invalidate any of the accident analyses results or conclusions. All of the safety analysis acceptance criteria continue to be met. The changes in the concentrations increase the amount of boron in the sump during a LOCA. The increased boron in the sump is sufficient to maintain the core in a subcritical condition during a LOCA. Also, a revised hot leg switchover time has been calculated and will be implemented in the plant EOPs. Thus, there will be no boron precipitation in the core during a LOCA.

Furthermore, there is no possibility of a different kind of non-LOCA event. The concentration changes are a benefit to the SLB at full power analysis due to the reduction in power increase during the accident. The loss of normal feedwater event is not sensitive to changes in the RWST and

accumulator boron concentrations. The concentration changes do not affect the inadvertent operation at ECCS analysis since the minimum DNBR occurs at the event initiation, and the concentration changes do not affect the analysis trend.

Finally, the concentration changes are a benefit for the SLB M&E release and SGTR events since the increased boron increases the available shutdown margin for these events.

(3) or involve a significant reduction in a margin of safety.

The changes do not invalidate any of the non-LOCA safety analysis results or conclusions, and all of the non-LOCA safety analysis acceptance criteria continue to be met. The margin of safety associated with the licensing basis LBLOCA and SBLOCA (small-break loss-of-coolant accident) analyses is not reduced as a result of the proposed changes. Since adequate margin to the PCT (peak cladding temperature) limit of 2200°F has been maintained, no degradation in the margin of safety to the design failure point (fuel melt) has been calculated. The licensing basis containment and steam line break mass and energy releases remain bounding, and the SGTR event acceptance criteria continue to be met. Furthermore, the changes do not affect the safety related performance of the RWST, accumulator or related NSSS components.

Part 2—Safety Limits, Instrumentation, and Reactor Coolant System.

The Nuclear Regulatory Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92 (c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility, in accordance with the proposed amendment, would not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated;

The proposed changes do not result in a condition where the design, material, and construction standards, which were applicable prior to the changes, are altered. The revised OTDT and OPDT setpoints do not require any hardware changes and are used for accident mitigation. Thus, the setpoint changes do not increase the probability of the accident.

All of the affected NSSS systems and components have been evaluated with the TDF (thermal design flow) of 93,100 gpm. The primary loop components (reactor vessel, reactor internals, CRDMs (control rod drive mechanism), loop piping and supports, reactor coolant pump, steam generator, and pressurizer) meet the applicable structural limits with the revised TDF of 93,100 gpm and will continue to perform their design functions. The RCCA (rod cluster control assembly) drop time remains unaffected and the current design core bypass flow remains valid. No additional steam generator tubes need to be plugged to mitigate the potential for U-Bend fatigue. Also, all of the NSSS systems will still perform their intended design functions. The pressurizer spray flow remains above the design value and the pressurizer relief system remains unaffected

since the TDF is lower than the current design flow and the required pressure drop is lower. The design of the auxiliary system components remains bounding for the revised TDF and the corresponding changes to the NSSS thermal hydraulic parameters. In addition, all of the NSSS/BOP (nuclear steam supply system/balance of plant) interface systems will perform their intended design functions. The steam generator safety valves will provide adequate relief capacity to maintain the steam generator within applicable design limits. The ADVs [atmospheric dump valves] will still relieve 20 percent of the maximum full load steam flow. The steam dump system will still relieve 40 percent of the maximum full load steam flow.

All of the applicable acceptance criteria for the accidents described in the FSAR continue to be met. The LBLOCA analysis currently uses a TDF of 93,100 gpm. Thus, no adjustments are required for the LBLOCA input parameters to accommodate the TDF of 93,100 gpm. The SBLOCA has been performed with the TDF of 93,100 gpm, and the corresponding PCT is well below the 2200°F limit. The post LOCA boron concentration and the hot leg switchover time are unaffected. The revised thermal design procedure has been implemented to obtain sufficient DNB margin to account for the TDF of 93,100 gpm, the new OTDT/OPDT setpoints and the Cycle 2 design features. All of the non-LOCA analyses have been re-analyzed or re-evaluated and all of the applicable acceptance criteria continue to be met.

The SLB radiological doses are unaffected and are still within the existing licensing basis limits. The margin to overflow during the SGTR event has been improved and the offsite doses during an SGTR have been re-calculated and shown to be well within the 10CFR100 guidelines. The plant control systems will still provide adequate response for the Condition 1 transients without causing a reactor trip on OTDT and OPDT.

Finally, the changes in the tolerances for indicated differential temperature, T prime and T double prime do not require any hardware modifications and only require changes to the Technical Specification Allowable Values for the OPDT and OTDT setpoints and for the vessel DT equivalent to power functions. Thus, there is no increase in the probability of an accident since the appropriate Allowable Values have been modified to determine channel operability for these functions.

(2) or create the possibility of a new or different kind of accident from any accident previously evaluated;

The proposed changes do not cause the initiation of any accident nor create any new limiting single failures. The OTDT and OPDT protection functions are used for accident mitigation and do not initiate any accidents. Also, the affected systems and components will still perform their intended design functions.

* * *

The proposed changes do not create any new failure modes for safety related equipment. The changes do not result in any original design specification, such as seismic

requirements, electrical separation requirements or equipment qualification being altered. The OTDT and OPDT setpoint changes do not require any hardware modifications and only require adjustments to the setpoint values. The setpoints are modeled in accident analyses which are used to demonstrate equipment and structural qualification during a SLB. With the setpoint changes and the TDF of 93,100 gpm, the current SLB break M&E releases inside containment remain bounding and thus there is no effect on the qualification of the equipment inside containment during a SLB. The SLB M&E releases outside containment have been re-calculated. The analysis of the impacts on equipment qualification outside containment has been completed by generating new temperature profiles. The application addresses and provides for continued qualification of equipment through the normal EQ program.

Also, with the reduced TDF of 93,100 gpm, the current LOCA M&E releases are still bounding, and thus there is no effect on the qualification of equipment inside containment during a LOCA. The OTDT and OPDT functions are not modeled in the LOCA analyses. Furthermore, all of the applicable compartments and subcompartments will maintain their integrity during the LOCA and the SLB since the mass and energy releases for these compartments and subcompartments remain unaffected.

In addition, the LOCA hydraulic forcing functions remain bounding for the TDF of 93,100 gpm. Thus, the applicable NSSS systems and components will still perform their structural functions during a LOCA.

Finally, the changes in the tolerances for DT_o, T prime and T double prime do not require any hardware modifications and only require changes to the Technical Specification Allowable Values for the OPDT and OTDT setpoints and for the vessel DT equivalent to power functions. Thus, there is no increase in the probability of an accident different than any previously evaluated since the appropriate Allowable Values have been modified to determine channel operability for these functions.

(3) or involve a significant reduction in a margin of safety.

The margin of safety for the applicable safety analyses has not been reduced. The OPDT and OTDT setpoints have been incorporated into the affected safety analyses and all safety analysis criteria continue to be met. All of the applicable DNB limits continue to be met for the non-LOCA analyses. The LBLOCA input parameters do not require adjustment for the TDF of 93,100 gpm. The SBLOCA has been re-analyzed for the TDF of 93,100 gpm, and the SBLOCA PCT is well below the 2200°F limit. The affected NSSS systems and components will still meet the applicable design limits and perform their intended safety functions with the TDF of 93,100 gpm. Also, the SLB and LOCA M&E releases are still within the applicable equipment qualification limits. The SGTR doses remain within the applicable 10 CFR 100 limits, and the steam generator margin to overflow is maintained.

Summary—Parts I and II. Based on the above, TVA has determined that operation of

Watts Bar in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. Therefore, operation of Watts Bar in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92.

Part 3—Addition to Core Operating Limit Report Methodologies

(1) involve a significant increase in the probability or consequences of an accident previously evaluated;

The use of ZIRLO™ is already permitted by TS section 4.2.1. Accordingly, the addition of the NRC approved Westinghouse COLR methodology reference is administrative in nature. Therefore, there is no increase in the probability or consequences of an accident previously evaluated.

(2) or create the possibility of a new or different kind of accident from any accident previously evaluated;

Since the use of ZIRLO™ is already permitted by TS section 4.2.1, the addition of the NRC approved Westinghouse COLR methodology reference is administrative in nature. Accordingly, no new or different kind of accident has been created from those previously evaluated.

(3) or involve a significant reduction in a margin of safety.

The use of ZIRLO™ is already permitted by TS section 4.2.1. The addition of the NRC approved Westinghouse COLR methodology reference is administrative in nature. Therefore, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room
location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as

individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: May 2, 1997.

Brief description of amendment request: The proposed amendment would change the main steam isolation valve (MSIV) closure time assumption used in the main steam line break accident analysis and referenced in the Basis for Technical Specification 4.7.

Date of individual notice in Federal Register: May 15, 1997 (62 FR 26829).

Expiration date of individual notice: June 16, 1997.

Local Public Document Room
location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: September 30, 1996, as supplemented November 26, and December 12, 1996, February 13, March 5, April 2, April 16, May 9, and June 3, 1997 (TSCR 192).

Description of amendment request: The proposed amendments would change Technical Specification requirements related to the service water system, component cooling water system, containment cooling and iodine removal systems, auxiliary electrical systems, and the control room emergency filtration system. The supplemental applications dated April 2, April 16, May 9, and June 3, 1997, would eliminate separate requirements for the component cooling water system for single-unit and two-unit operation, revise the acceptance criteria for laboratory testing of the control room emergency filtration system charcoal adsorber banks from 90 percent to 99 percent, and supplement additional information on the basis for acceptability of equipment qualification analyses and dose assessments resulting from a loss-of-coolant accident. The

June 3, 1997, submittal requested the proposed amendments be handled on an exigent basis based on the current schedule which indicates that Unit 2 restart is scheduled for June 25, 1997, and Unit 1 restart is scheduled for July 1, 1997, and failure of the issuance of the amendments by these dates would result in prevention of Point Beach's resumption of operation.

Date of individual notice in the Federal Register: June 10, 1997 (62 FR 31636).

Expiration date of individual notice: July 10, 1997.

Local Public Document Room
location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the

local public document rooms for the particular facilities involved.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: June 20, 1996, as supplemented by letters dated December 30, 1996, and March 5, 1997.

Brief description of amendments: The amendments would change the Technical Specifications (TS) by incorporating NRC-approved thermal limit licensing methodology in the list of approved methodologies used in establishing the fuel cycle-specific thermal limits. In addition, the proposed amendment will change the TS to reflect the use of Siemens Power Corporation (SPC) ATRIUM-9B fuel for all operating Modes at Dresden, Unit 3. The proposed amendment would also correct minor editorial items in the TS.

Date of issuance: June 12, 1997.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 160 and 155.

Facility Operating License Nos. DPR-19 and DPR-25: The amendments revised the licenses and the Technical Specifications.

Date of initial notice in Federal Register: April 9, 1997 (62 FR 17227). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 12, 1997.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 12, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450. Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: March 31, 1997. *Brief description of amendment:* The amendment revises Technical Specifications (TSs) to remove the reference of Valve 863 from TS Table 3.6-1. This revision would allow for the installation of a proposed modification for automatic closure of Valve 863 upon receipt of a Phase A containment Isolation signal.

Date of issuance: June 19, 1997.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 193.

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 15, 1997 (62 FR 26823). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 19, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: March 27, 1997, as supplemented by letter dated May 6, 1997.

Brief description of amendment: The amendment changes the Technical Specification 3/4.5.2, "ECCS Subsystems—Modes 1, 2, and 3." The proposed changes add a surveillance requirement to verify the Emergency Core Cooling System (ECCS) piping is full of water at least once per 31 days, and clarifies wording of surveillance requirement 4.5.2.j. The amendment also revises the TS Bases 3/4.5.2 and 3/4.5.3 to reflect surveillance requirement.

Date of issuance: June 11, 1997.

Effective date: June 11, 1997, to be implemented within 60 days.

Amendment No.: 130.

Facility Operating License No. NPF-38: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 9, 1997 (62 FR 17234). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 11, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida.

Date of application for amendment: December 20, 1996, and supplemented February 13, and April 17, 1997.

Brief description of amendment: This amendment modifies the Technical Specifications (TS) to delete a footnote associated with TS 2.1.1, "Reactor Core Safety Limits" which requires reactor thermal power to be limited to 90% of 2700 Megawatts thermal for Cycle 14 operation beyond 7000 Effective Full Power Hours.

Date of Issuance: May 16, 1997.

Effective Date: May 16, 1997.

Amendment No.: 151.

Facility Operating License No. DPR-67: Amendment revised the TS.

Date of initial notice in Federal Register: January 15, 1997 (62 FR 2190).

The February 13, and April 17, 1997, letters provided clarifying information that did not change the scope of the December 20, 1996, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: July 28, 1995, as revised February 21, 1997.

Brief description of amendments: The amendments revise the Technical Specifications for the Prairie Island Nuclear Generating Plant to allow credit for soluble boron in spent fuel criticality analyses. The request is based on the NRC approval of the Westinghouse Owners Group generic methodology for crediting soluble boron given in Topical Report WCAP-14416-NP-A, "Westinghouse Spent Fuel Rack Criticality Analysis Methodology," Revision 1, November 1996.

Date of issuance: June 12, 1997.

Effective date: June 12, 1997, with full implementation within 30 days.

Amendment Nos.: 129 and 121.

Facility Operating License Nos. DPR-42 and DPR-60: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 26, 1997 (62 FR 14464).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 12, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: January 13, 1997, as supplemented March 24, 1997, May 13, 1997, and May 23, 1997.

Brief description of amendment: The amendment revises Technical Specifications Requirements for containment leakage testing to add several containment isolation valves and to implement the requirements of 10 CFR Part 50, Appendix J, Option B for performance-based primary reactor containment leakage testing.

Date of issuance: June 17, 1997.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 174.

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 19, 1997 (62 FR 13173).

The March 24, May 13, and May 23, 1997, supplemental letters provided clarifying information that did not change the initial proposed no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 17, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: January 31, 1997.

Brief description of amendments: The amendments revise Technical Specification 3/4.6.1.5, and its associated Bases section, to ensure that a representative average containment air temperature is measured.

Date of issuance: June 13, 1996.

Effective date: Both units, as of the date of issuance, to be implemented within 60 days.

Amendment Nos.: 195 and 178.

Facility Operating License Nos. DPR-70 and DPR-75: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 12, 1997 (62 FR 11497).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 13, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: August 22, 1996, as supplemented March 28, 1997.

Brief description of amendments: Revise Technical Specifications (TS) 3.6.5 and associated Bases to lower the minimum TS ice basket weight. Also extend the chemical analysis surveillance interval for the ice condenser ice bed from 12 months to 18 months.

Date of issuance: June 10, 1997.

Effective date: June 10, 1997.

Amendment Nos.: 224, 215.

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the TS.

Date of initial notice in Federal Register: April 23, 1997 (62 FR 19835).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 10, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: April 22, 1997, as supplemented on May 15, and June 2, 1997. The April 22, 1997, submittal superseded a previous submittal on this subject dated September 6, 1996 (61 FR 53769), as supplemented on October 30, October 31, November 7, November 15, and November 27, 1996, and January 23 and January 29, 1997.

Brief description of amendment: The amendment revises TS Section 4.2.b, "Steam Generator Tubes," and its associated Basis, by allowing a laser-welded repair of Westinghouse hybrid expansion joint (HEJ) sleeved steam generator tubes.

Date of issuance: June 7, 1997.

Effective date: June 7, 1997.

Amendment No.: 135.

Facility Operating License No. DPR-43: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 7, 1997 (62 FR 24988).

The May 15, and June 2, 1997, submittals provided supplemental information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 7, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311-7001.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: April 24, 1997, as supplemented on May 15 and 28, and June 5, 1997.

Brief description of amendment: The amendment revises TS Section 4.2.b, "Steam Generator Tubes," to allow repair of steam generator (SG) tubes with Combustion Engineering (CE) leak-tight sleeves in accordance with CE generic topical report CEN-629-P, Revision 2, "Repair of Westinghouse Series 44 and 51 Steam Generator Tubes Using Leak-Tight Sleeves." The TS are also revised to allow re-sleeving of tubes with existing sleeve joints in accordance with KNPP specific topical report CEN-632-P, "Repair of Kewaunee Steam Generator Tubes Using a Re-Sleeving Technique."

Date of issuance: June 7, 1997.

Effective date: June 7, 1997.

Amendment No.: 134.

Facility Operating License No. DPR-43: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 7, 1997 (62 FR 24989).

The May 15 and 28, and June 5, 1997, submittals provided supplemental information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 7, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311-7001.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: April 28, 1997, as supplemented on May 19, 1997.

Brief description of amendment: The amendment establishes a new design basis flow rate for the auxiliary feedwater (AFW) pumps consistent with the assumptions used in the reanalysis of the limiting design basis event for the

AFW system. The Basis for TS 3.4.b, "Auxiliary Feedwater System," has been revised to reflect the change in AFW flow and to clarify the requirements for the AFW cross-connect valves.

Date of issuance: June 7, 1997.

Effective date: June 7, 1997.

Amendment No.: 133.

Facility Operating License No. DPR-43: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 7, 1997 (62 FR 24977).

The May 19, 1997, submittal provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 7, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room

location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311-7001.

Dated at Rockville, Maryland, this 25th day of June, 1997.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97-17140 Filed 7-1-97; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-160]

Georgia Institute of Technology Research Reactor; Closing of Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission (NRC) is closing the local public document room (LPDR) for records pertaining to the Georgia Institute of Technology (Georgia Tech) Research Reactor located at the Decatur Library, Decatur, Georgia, effective July 3, 1997.

This LPDR was established in April 1996 during the NRC's review of Georgia Tech's license renewal application. There is no longer a need for the LPDR since License R-97 was renewed for a 20-year term on May 30, 1997.

Dated at Rockville, Md., this 26th day of June 1997.

For the Nuclear Regulatory Commission.

Russell A Powell,

Chief, Freedom of Information/Local Public Document Room Branch, Office of Information Resources Management.

[FR Doc. 97-17297 Filed 7-1-97; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Categorizing and Transporting Low Specific Activity Materials and Surface Contaminated Objects: Availability

The Nuclear Regulatory Commission and the Department of Transportation have jointly prepared a draft report (designated NUREG-1608 and RSPA Advisory Guidance 97-005) entitled "Categorizing and Transporting Low Specific Activity Materials and Surface Contaminated Objects." NRC is issuing the draft report for review and comment.

The primary purpose of this draft guidance is to assist shippers in preparing low specific activity materials (LSA) and surface contaminated objects (SCOs) for shipment in compliance with Federal regulations. The draft guidance is provided in question and answer format on the classification, characterization, packaging and transportation of LSA and SCOs, including the definition of LSA and SCOs, the determination of distribution on of activity in LSA material or on SCO surfaces, mixing LSA and SCOs in a package, radiation level measurements, and various other aspects of transporting LSA and SCOs.

NRC is particularly interested in comment regarding the use of its "Final Branch Technical Position on Concentration Averaging and Encapsulation," January 17, 1995, in the draft guidance (see Questions 4.2.4, 5.1.4, and 5.2.3). Also, NRC is interested in comment on the utility to shippers of Appendix A.

Draft NUREG-1608 is available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington DC 20555-0001. A free single copy of Draft NUREG-1608, to the extent of the supply, may be requested by writing to Distribution Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Submit comments on draft NUREG-1608 by (90 days after publication date). Mail comments to: Chief, Rules and Directives Branch, Mail Stop T-6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Comments may be hand-delivered to

11545 Rockville Pike, Maryland between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Comments may also be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FEDWORLD. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FEDWORLD can be accessed directly by dialing the toll free number: 1-800-303-9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI terminal emulation, the NRC NUREG and Reg Guide Comments subsystem can then be accessed by selecting the "NRC Rules Menu" option from the "NRC Main Menu." For further information about options available for NRC at FEDWORLD consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FEDWORLD Online User's Guides" particularly helpful. Many NRC subsystems and databases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FEDWORLD can also be accessed by a direct dial phone number for the main FEDWORLD BBS: 703-321-3339; Telnet via Internet: fedworld.gov (192.239.92.3); File Transfer Protocol (FTP) via Internet: ftp.fedworld.gov (192.239.92.205); and World Wide Web using: http://www.fedworld.gov (this is the Uniform Resource Locator (URL)).

If using a method other than the toll free number to contact FEDWORLD, the NRC subsystem will be accessed from the main FEDWORLD menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has an option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area can also be accessed directly by typing "/go nrc" at a FEDWORLD command line. If you access NRC from FEDWORLD's main menu, you may return to FEDWORLD by selecting the "Return to FEDWORLD" option from the NRC Online Main Menu. However, if you access NRC at FEDWORLD by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FEDWORLD system.

If you contact FEDWORLD using Telnet, you will see the NRC area and menus, including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FEDWORLD using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

Although FEDWORLD can be accessed through the World Wide Web, like FTP that mode provides access for downloading files and does not display the NRC Rules Menu. For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-5780; e-mail AXD3@nrc.gov.

Dated at Rockville, Maryland, this 19th day of June, 1997.

For the Nuclear Regulatory Commission.

Susan F. Shankman,

Chief, Transportation Inspection and Safety Branch, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97-17292 Filed 7-1-97; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Cancellation of Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the meeting of the Federal Prevailing Rate Advisory Committee scheduled for Thursday, July 3, 1997, has been canceled.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415, (202) 606-1500.

Dated: June 25, 1997.

Phyllis G. Foley,

Chair, Federal Prevailing Rate Advisory Committee.

[FR Doc. 97-17230 Filed 7-1-97; 8:45 am]

BILLING CODE 6325-01-M

OFFICE OF PERSONNEL MANAGEMENT

National Partnership Council Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

TIME AND DATE: 2:00 p.m., July 9, 1997.

PLACE: Grand Lounge and Lower Lounge, William Pitt Union Building, University of Pittsburgh, Pittsburgh, Pennsylvania 15260.

STATUS: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with special access needs wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

MATTERS TO BE CONSIDERED: Professor Marick Masters, a faculty member of the University of Pittsburgh's Joseph M. Katz Graduate School of Business, and Professor Bob Albright of the Coast Guard Academy, will brief the National Partnership Council (Council) on the preliminary findings of the Council's 1997 survey to assess the labor-management relations climate and the effect of partnership in the federal sector. The Project Team for the Council's Partnership Facilitation Project, which involves outreach to partnerships facing challenges, will present an update on its activities since the Council's June 11, 1997 meeting. Potential candidates for participation in the Partnership Facilitation Project will be presented to the Council, together with a number of options for the Council's consideration and action.

CONTACT PERSON FOR MORE INFORMATION: Michael Cushing, Director, Center for Partnership and Labor-Management Relations, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 7H28, Washington, DC 20415-0001, (202) 606-2930.

SUPPLEMENTARY INFORMATION: We invite interested persons and organizations to submit written comments. Mail or deliver your comments to Michael Cushing at the address shown above.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 97-17232 Filed 7-1-97; 8:45 am]

BILLING CODE 6325-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38769; File No. SR-MBSCC-97-02]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Approving a Proposed Rule Change Relating to the Valuation of Securities Deposited as Collateral in the Participants Funds to Satisfy Daily Margin Requirements

June 24, 1997.

On February 12, 1997, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-MBSCC-97-02) pursuant to Section 19(b) (1) of the Securities Exchange Act of 1934 ("Act").¹ On March 26, 1997, MBSCC filed an amendment to the proposed rule change.² Notice of the proposal was published in the **Federal Register** on April 28, 1997.³ No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

MBSCC's rules allow participants to satisfy their margin requirements by depositing approved forms of collateral such as cash, securities,⁴ and letters of credit into the participants fund. Recently, securities have become the dominant form of acceptable collateral used by participants to satisfy their margin requirements. As a result of this increased use of securities, MBSCC reappraised the value given to securities deposited as collateral for participants funds obligations.

Currently, MBSCC values mortgage-backed securities at the lesser of par or current market value, and it values Treasury securities at current market value. MBSCC revalues both types of securities daily and analyzes them for pending maturity.

Under the proposal, MBSCC will value mortgage-backed securities with a remaining maturity of one year or more at the lesser of par or 95 percent of the current market value and Treasury securities with a remaining maturity of one year or more at 95 percent of their

¹ 15 U.S.C. 78s(b) (1).

² Letter form Richard J. Paley, MBSCC (March 25, 1997).

³ Securities Exchange Act Release No. 38536 (April 22, 1997), 62 FR 22983.

⁴ Securities acceptable as collateral include direct obligations of the United States (*i.e.*, Treasury Bills, Treasury Notes, and Treasury Bonds ("Treasury securities") and mortgage-backed securities issued by the Government National Mortgage Association, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

current market value.⁵ MBSCC will value mortgage-backed securities with a remaining maturity of less than one year at the lesser of par or the current market value and Treasury securities with a remaining maturity of less than one year at the current market value. MBSCC will continue to revalue securities daily and analyze them for pending maturity before the depositing participant is credited.⁶

II. Discussion

Section 17A(b) (3) (F) of the Act requires that the rules of a clearing agency be designed to ensure the safeguarding of securities and funds in its custody or control or for which it is responsible.⁷ The Commission believes that MBSCC's proposed rule change is consistent with its obligations under Section 17A of the Act. By amending this valuation procedures, MBSCC's valuation should more accurately reflect the actual values of the securities deposited as collateral. Accordingly, MBSCC will have greater certainty that the securities deposited by a participant will be sufficient to satisfy the participant's obligations to MBSCC in the event that the participant becomes insolvent or defaults.

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-97-02) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

⁵ The proposal also provides that from time to time MBSCC may use a lower percentage of the current market value in determining the collateral value of mortgage-backed securities or Treasury securities.

⁶ Because par value for mortgage-backed securities is \$100, the proposed rule change will apply a five percent haircut only to those mortgage-backed securities that have a current market value of \$105 or less. For example, a mortgage-backed security with a current market value exceeding \$105 is and will continue to be revalued to a par value of \$100. However, a mortgage-backed security with a current market value of \$105 will now be revalued to \$99.75 or 95 percent of current market value. Similarly, a mortgage-backed security with a current market value of \$99 will be revalued to \$94.05.

⁷ 15 U.S.C. 78q-1(b) (3) (F).

⁸ 17 CFR 200.30-3(a) (12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-17252 Filed 7-1-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and, Information Services, Washington, DC 10549.

Extension

Rules 1(a), 1(b)

Forms U5A, U5B, File No. 270-168, OMB Control No. 3235-0170

Rule 3

Form U-3A3-1, File No. 270-77, OMB Control No. 3235-0160

Rule 26, File No. 270-78, OMB Control No. 3235-0183

Rule 44, File No. 270-162, OMB Control No. 3235-0147

Rule 62

Form U-R-1, File No. 270-166, OMB Control No. 3235-0152

Rule 88

Form U-13-1, File No. 270-80, OMB Control No. 3235-0182

Rule 95

Form U-13E-1, File No. 270-74, OMB Control No. 3235-0162

Form U-7D, File No. 270-75, OMB Control No. 3235-0165

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rules 1(a) and 1(b) [17 CFR 250.2(a), 250.1(b)] and Forms U5A and U5B [17 CFR 259.5a, 259.5b] implement Sections 5(a) and 5(b) of the Public Utility Holding Company Act of 1935, as amended ("Act"), which require any holding company or any person proposing to become a holding company to file with the Commission a notification of registration and registration statement, respectively. The information is necessary for the Commission to determine whether a new registrant is in compliance with the Act.

The initial burden of this requirement is approximately 80 hours per respondent. Historically, there has been

one respondent approximately every four years, therefore the weighted annual burden over a four year period is 20 hours. Companies filing under this rule are required to retain records for a period of the years, and the provision of the information is mandatory. The retention time period allows the Commission the opportunity to perform its audit functions. Responses are not kept confidential.

Rule 3 [17 CFR 250.3] permits a bank that is also a public utility holding company to claim an exemption from the requirements of the Act, through the submission of an annual statement on Form U-3A3-1 [17 CFR 259.403]. The rule and the form are used by the Commission staff to expedite its review of compliance with sections 3(a)(4) of the Act. Rule 3 and Form U-3A3-1 permit a bank that is also a public utility holding company to avoid the burdens associated with an application for an exemption from the requirements of the Act. An application for an exemption would involve a formal order, which might require an administrative hearing and would otherwise consume a significant amount of Commission resources. Each year the Commission receives five submissions from banks; each takes about two hours to complete. Thus a total annual burden of ten hours is imposed. Banks that are required to file under this rule are to retain the records for a period of ten years. This retention period is consistent with requirements imposed by federal agencies that regulate banks. Banks are allowed to request confidential treatment of information filed under this rule.

Rule 26 [17 CFR 150.26] sets forth the financial statement and recordkeeping requirements for registered holding companies and their subsidiaries. This information collection is of fundamental importance to the Commission in the review of financial statements of registered public utility holding companies. The Commission reviews financial statements in connection with its review of proposals submitted for approval under several provisions of the Act. The rule imposes no annual burden because there is no form, as such, under Rule 26 and because the information is required for Form U5S, which is subject to separate OMB review. In addition, there is no requirement for record retention under this rule.

Rule 44 [17 CFR 250.44] prohibits sales of utility securities or utility assets owned by registered public utility holding companies, except pursuant to a declaration notifying the Commission of the proposed transaction, which becomes effective in accordance with

the procedure specified in 17 CFR 150.23, and pursuant to the order of the Commission with respect to such declaration under the applicable provisions of the Act. The information is essential to Commission administration of Section 12(d) of the Act and is not otherwise available. The Commission analyzes the information to determine if the proposed sale is consistent with the public interest. The rule imposes a burden of about 72 hours each year on three respondents, each of which makes one submission. There is no requirements for record retention under this rule and the submissions are not kept confidential.

Rule 62 [17 CFR 250.62] prohibits the solicitation of authorization regarding any security of a regulated company in connection with reorganization subject to Commission approval or regarding any transaction which is the subject of an application or declaration, except pursuant to a declaration regarding the solicitation which has become effective. The information is necessary to permit the Commission to adequately enforce Sections 12(e) and 11(g) of the Act. The rule and form U-R-1 [17 CFR 259.221] impose a total annual burden of 50 hours on ten companies, who each spend five hours, and file once annually. There is a three year record retention under this rule and the submission are not kept confidential.

Rule 88 [17 CFR 250.88] requires the filing of Form U-13-1 [17 CFR 259.113] for a mutual or subsidiary service company performing services for affiliate companies of a holding company system. Eighteen respondents initially spend a total of approximately 36 hours meeting this requirement. Thereafter, there is no annual burden. Service companies filing under this rule are required to retain records for a period of ten years, and the provision of the information is mandatory. The retention time period allows the Commission the opportunity to perform its audit functions. Responses are not kept confidential.

Rule 95 [17 CFR 250.95] requires service companies to file reports on Form U-13E-1 [17 CFR 259.213] with the Commission prior to their performance of contracts for registered holding companies or their subsidiaries, for services, construction, or sales of goods. The Commission requires this information to enforce the provisions of Section 13(e) and Section 13(f) of the Act. The enforcement of these statutes would be compromised without the collection of this information, which is not available from other sources. Companies that file under this rule are required to retain records for a period of

six years, and the provision of this information is required. The retention period allows the Commission to perform its audit functions. One company meets this requirement on an annual basis with an estimated average burden of two hours. This information is not kept confidential.

Form U-7D [17 CFR 259.404] establishes the filing company's right to the exemption authorized for financing entities holding title to utility assets leased to a utility company. The information is necessary for the Commission to determine whether a company is exempt from, or governed by, the Act. The form imposes a total annual burden of 126 hours on 42 respondents, who each spend three hours annually preparing and filing one response. Companies filing under this rule are required to retain records for a period of ten years, and the provisions of the information is mandatory. The retention time period allows the Commission the opportunity to perform its audit functions, and generally coincides with companies' obligation period under their respective leases. Responses are not kept confidential.

The estimates of average burden hours are made for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will 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 collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: June 16, 1997.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97-17255 Filed 7-1-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38778; File No. SR-BSE-97-01]

Self-Regulatory Organizations; Boston Stock Exchange; Order Approving Proposed Rule Change Amending the Minor Rule Violation Plan

June 26, 1997.

I. Introduction

On May 13, 1997, the Boston Stock Exchange, Inc., ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder² a proposed rule change relating to amendments to the Minor Rule Violation Plan. The proposed rule change was published for comment in Securities Exchange Act Release No. 38656 (May 20, 1997), 62 FR 28913 (May 28, 1997). The Commission received no comments on the proposal.

II. Description of the Proposal

BSE is amending its Minor Rule Violation Plan to add or increase summary fine provisions for carrying weapons, fighting on the Exchange premises, and failure to comply with Floor Official rulings.

The Exchange first proposes to increase the summary fine for possession of a firearm or other weapon on the Exchange premises from \$2500 for any offense to \$5000 for any offense.

The Exchange seeks to add a summary fine provision for unauthorized physical contact with the intent to cause harm or intimidate another on the Exchange premises, with summary fines of \$500 for the first offense, \$1000 for the second offense, and \$2500 for subsequent offenses. The corresponding rule provision is Article XIV, Section 5 of the Exchange Constitution.

The Exchange also seeks to add a summary fine provision for failure to comply with an appealed Floor Official ruling that stands.³

Finally, the Exchange seeks to amend the rule provision regarding appeals to summary fines to require filing with the Office of the General Counsel, rather than with the Surveillance Department, in an effort to provide a more efficient coordination of the appeal process.

The Exchange believes that the proposal is consistent with Section

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On June 18, 1997, the Exchange filed SR-BSE-97-03 seeking to amend the corresponding rule provision relating to Floor Officials.

6(b)(5) of the Act,⁴ in that it is designed 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; and is not designed to permit unfair discrimination between customer, issuers, brokers, or dealers.

III. Discussion

The Commission believes BSE's proposed rule change is consistent with section 6(b)(5) of the Act.⁵ Section 6(b)(5) requires, among other things, that the rules of an exchange be designed 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 perfect the mechanism of a free and open national market system, and, in general, to further investor protection and the public interest.⁶

BSE is proposing to increase the fines for possession of a firearm or other weapon on the Exchange premises. The Commission believes that implementing such fines should serve as an effective deterrent against possessing weapons on the Exchange premises, thereby ensuring the safety of Exchange members, staff and guests. Similarly, the Commission believes the addition of a summary fine provision for unauthorized physical contact on the Exchange premises is appropriate as it should deter such contacts and prevent member disputes from escalating to a physical confrontation, again ensuring the safety of those present on the Exchange floor.

The Commission believes the addition of a summary fine provision for failure to comply with an appealed Floor Official ruling that stands, is appropriate as it will ensure that rule interpretations and execution quality issues on which Floor Officials are asked to making rulings are addressed in a timely manner for the benefit of the customer.

Finally, the Commission believes an amendment requiring that appeals to summary fines be filed with the Office of the General Counsel is appropriate as

it will provide more efficient coordination of the appeal process, thereby furthering investor protection and the public interest.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the BSE, and in particular Section 6(b)(5).

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (File No. SR-BSE-97-01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-17318 Filed 7-1-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38782; File No. SR-CBOE-97-15]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to OEX-SPX Spread Orders, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change

June 26, 1997.

I. Introduction

On March 4, 1997, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to establish a rule to facilitate the transaction of spread orders between S&P 500 Index options ("SPX") and S&P 100 Index options ("OEX"). On May 15, 1997, CBOE submitted an amendment ("Amendment No. 1") to the proposed rule change.³ On June 13, 1997, CBOE

¹ 15 U.S.C. 78s(b)(2)

² 17 CFR 200.30-3(a)(12).

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

⁵ In Amendment No. 1, the CBOE revised the proposed language of Rule 24.18 to better reflect the intent of the proposal and provide additional justification for the proposal. See Letter from Timothy Thompson, Senior Attorney, CBOE, to Elaine Darroch, Attorney, Division of Market Regulation, Securities and Exchange Commission (May 14, 1997).

submitted a second amendment ("Amendment No. 2") to clarify textual language regarding how the rule operates.⁴

The proposed rule change and Amendment No. 1 thereto was published for comment in Securities Exchange Act Release No. 38650 (May 16, 1997), 62 FR 28525 (May 23, 1997). No comments were received on the proposal. This order approves the proposed rule change and Amendment No. 1 thereto, and accelerates approval of Amendment No. 2.

II. Description of the Proposal

Exchange Rule 6.45 establishes the rules of priority for bids and offers. Generally, the highest bid and the lowest offer shall have priority, with certain designated exceptions. Rule 6.45(d) provides one such exception to the rule for members holding a spread, straddle or combination order and bidding or offering in a multiple of 1/16. The exception, however, is limited to spread orders involving the same class of options. Accordingly, members seeking to execute OEX-SPX spread orders ("spread orders" or "orders"), which involve two different classes of options, currently must execute individual legs of the transaction at two different trading posts. Because OEX-SPX orders cannot be quoted at one price and traded at the same post, market participants wishing to trade such options face a risk that the market will move in the time it takes to execute the second leg of the order at the other trading post.

The Exchange proposes to add new Rule 24.18 ("Rule") to facilitate the transaction of OEX-SPX spread orders. Paragraph (a) of the Rule defines an OEX-SPX spread order as an order to buy a stated number of OEX (SPX) contracts and to sell an equal number of OEX (SPX) contracts. Paragraph (b) of the Rule sets forth the procedures to be followed in representing and filling an OEX-SPX spread order. An OEX-SPX spread order may be represented initially at either the OEX or SPX trading post. The trading post where the order is first represented will be the "primary trading station" for purposes of the Rule. Immediately after the order is represented at the primary trading station, or concurrent with the announcement of such order, the

⁴ Amendment No. 2 clarified that no leg of a spread order can trade at a price outside currently displayed bids or offers or bids or offers in the customer limit order book. See Letter from Timothy Thompson, Senior Attorney, CBOE, to Elaine Darroch, Attorney, Division of Market Regulation, Securities and Exchange Commission (June 12, 1997).

⁴ 15 U.S.C. 78f(b)(5).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 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).

member initiating the order must contact the Order Book Official at the other trading station (OEX or SPX). The announcement at the other trading station must specify the terms of the order, a contact person for the order, and the telephone number of the contact person at the primary trading station.⁵ The form of the announcement in the other trading station will be determined by the appropriate Floor Procedure Committee for the trading station where the announcement is to be made.

Once the order has been represented at the primary trading station and the order has been announced at the other trading station, the member representing the order may fill the order at the best net debit or credit, whether from the primary trading station or from the other trading station, provided the conditions described below are met. The priority of the bids and offers on OEX-SPX spread orders will be determined by the same concept that applies to spread orders on a single class of options as set forth in Rule 6.45(d). Paragraph (b)(iii) of the Rule provides that a member holding an order on an OEX-SPX spread that is priced net at a multiple of $\frac{1}{16}$ (i.e., $\frac{1}{4}$, $\frac{3}{8}$, $\frac{7}{16}$, $\frac{1}{2}$, etc.) will have priority over bids and offers in the trading crowd ("crowd") if both legs of the OEX-SPX spread would trade at a price that is at least equivalent to the quotes in the crowd. Similarly, such an order has priority over bids and offers in the customer limit order book⁶ ("limit order book" or "book") if at least one leg of the OEX-SPX spread would trade at a price that is better than the corresponding bid or offer in the book and no leg of the order would trade at a price outside the corresponding bid or offer in the book. Bids or offers that are part of an OEX-SPX spread order and that are not priced at a net multiple of $\frac{1}{16}$, while permissible, will not be entitled to priority under (b)(iii) to Rule 24.18.

As an illustration, assume that the relevant OEX option, Option O, is

quoted at 5 bid, $5-\frac{1}{8}$ asked, and the relevant SPX option, Option S, is quoted at 6 bid, $6-\frac{1}{8}$ asked, and assume that four quotes are represented in the book. In that instance, a spread involving the purchase (or sale) of Option O and the sale (or purchase) of Option S may trade at a net credit or debit of 1 (e.g., a net credit of 1 if Option O is bought at 5 and Option S is sold at 6, or a net debit if Option O is sold at $5-\frac{1}{8}$ and Option S is bought at $6-\frac{1}{8}$). In this example, because the net price is a multiple of $\frac{1}{16}$ and the execution of the spread involves taking the same side of the market as the book on one side of the spread at the book price, but bettering the book price on the other side of the market, the spread would receive priority. (That is, in the spread consisting of the purchase of Option O at 5 and the sale of Option S at 6, only the purchase of Option O occurs at the same price and on the same side of the market as the book, which is bid at 5; the sale of Option S at 6 betters the book, because the ask price in the book is $6-\frac{1}{8}$.) In this example, it would not be permissible under paragraph (b)(iii) of Rule 24.18 to trade the spread at a net debit of $\frac{7}{8}$ by selling the first option at $5-\frac{1}{8}$ and buying the second at 6, because this trade would be executed at the same price and on the same side of the market as the book on both sides of the spread.

Paragraph (b)(iv) permits bids and offers from the other trading crowd to participate equally with equal bids and offers from the primary trading station if those bids and offers from the other trading station are received promptly. The determination of whether an order is received promptly will depend on the size and the complexity of the order involved. For example, a large spread order might take a minute to execute, while a small spread order of ten contracts might require only 15 seconds to execute. The amount of time to satisfy the time requirement would be different in these two circumstances.⁷

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. In particular, the Commission believes the proposal is consistent with the Section 6(b)(5)⁸ of the Act in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove

impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public. In addition, the Commission believes the rule does not permit unfair discrimination between customers, issues, brokers, or dealers.

In this regard, the Commission finds that the new priority rules regarding the OEX-SPX spread orders should facilitate transactions in securities by providing an efficient manner for executing both legs of the transactions at one trading post. At the same time, the Commission believes that the proposal should not significantly undermine the rules of priority for bids or offers in the limit order books and for the trading crowds. The Commission finds that the rule strikes an appropriate balance by providing a spread order mechanism that should tighten and enhance the market in OEX-SPX spread orders, while setting limitations on when such spread orders can be executed ahead of bids and offers in the limit order books and displayed by the trading crowds.

In particular, the Commission notes that customers and traders alike often employ spread strategies between SPX and OEX options for hedging and risk management. Many customers and traders currently hedge their OEX option positions with S&P 100 futures because there are no widely available securities exchange products with the S&P 100 as the underlying. The Commission agrees with the Exchange that implementation of the proposed spread priority rule will encourage the use of OEX-SPX spread orders as an effective risk management tool, providing an alternative to cross market hedging of OEX options.⁹

The Commission notes that the CBOE has represented that traders often have difficulty in executing spread orders between the OEX and SPX trading posts. When the two legs of the order cannot be quoted at one price and traded at the same post, there is a risk that the market will move in the time it takes to execute the second leg of the OEX-SPX spread order. Consequently, the second leg of the strategy may not be filled at a price that makes the strategy feasible. Depending on the movement of the market, the execution of the second leg of the order may exacerbate the risk that the strategy was intended to hedge. The Commission agrees with the Exchange that this proposal will eliminate the risk of market movement for this strategy.

⁵The contact person does not have to, but may, provide brokerage to the members of the other trading crowd. The notice, however, will inform the members of the other trading crowd who they should contact if they want to participate in the trade.

⁶The Exchange notes that one of the conditions for executing a spread order at the best net debit or credit is that the member has determined that the order may not be executed by a combination of transactions with the bids and offers displayed in the OEX or SPX customer limit order book or by the displayed quotes of the trading crowds. The Exchange states that paragraph (b)(iii) of Rule 24.18 may be reasonably and fairly interpreted to mean that if the order can be executed in the marketplace at the order's price or at a better price, then the order cannot be executed as a spread order at the best net debit or credit. See Amendment No. 1, *supra* note 3.

⁷*Id.*

⁸15 U.S.C. § 78f(b)(5).

⁹The Commission previously recognized the important relationship between SPX and OEX options when it permitted haircut relief for offsetting positions. Securities Exchange Act Release No. 38248 (February 6, 1997), 62 FR 6474 (February 12, 1997).

Further, the Commission believes that the market for such orders will likely be tighter and more competitive when both legs are executed at the same post.

The Commission does not believe that investors with public orders on the limit order book and represented in the trading crowd will be significantly disadvantaged by the proposed rule change. Exchange Rule 24.18 provides that OEX-SPX spread orders can only be executed ahead of corresponding bids or offers in the limit order book or the crowd under specified conditions. The member representing an OEX-SPX spread order must check the limit order books before filling the order. The member also must provide notice to the other trading crowd. In order to achieve priority over the books, at least one leg of the OEX-SPX spread order must improve the bids or offers in the books while the other leg cannot be outside the bids or offers in the books. Executing at least one leg of the order at a better price than the established bid or offer will improve the market on at least one side. In order to be executed ahead of bids and offers in the trading crowd, the spread order must trade at a price at least equivalent to the quotes in the crowd. These conditions ensure that OEX-SPX spread order priority will only be allowed when such priority is necessary to ensure the appropriate execution of OEX-SPX spread orders, and only when such orders are priced equal to (or better) than customer orders represented in the trading crowd¹⁰ and customer limit order book, as described in greater detail above.

The Commission finds good cause to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, because the revised rule language contained in Amendment No. 2 merely clarifies the Exchange's original intent, it raises no new regulatory concerns. In addition, the CBOE's rule proposal was published for the entire twenty-one day comment period and generated no responses. Accordingly, the Commission believes that it is consistent with Sections 6(b)¹¹ and 19(b)(2)¹² of the Act to approve Amendment No. 2 to the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

¹⁰ The rule also protects broker-dealer proprietary orders in the trading crowd.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78s(b)(2).

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 will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-97-15 and should be submitted by July 23, 1997.

V. Conclusion

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-CBOE-97-15) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-17317 Filed 7-1-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38760; File No. SR-CHX-97-16]

Self-Regulatory Organizations; Notice of Filing of and Order Granting Temporary Accelerated Approval to a Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Trading Variations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 20, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The

¹³ 15 U.S.C. § 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval on a temporary basis to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Article XX, Rule 22 of the CHX's Rules, relating to trading variations.

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 III 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

Article XX, Rule 22 of the Exchange's Rules gives the Exchange's Committee on Floor Procedure the authority to fix minimum variations for bids and offers in specific securities or classes of securities. Pursuant to this authority, the Exchange changed its minimum variation to $\frac{1}{16}$ of \$1.00 per share for securities traded both on the Exchange and the New York Stock Exchange ("NYSE") that are selling at or greater than \$1.00, and to $\frac{1}{32}$ of \$1.00 per share for such securities that are selling below \$1.00, effective at such time as enhancement to Intermarket Trading System ("ITS") is made to permit trading in Tape A issues in minimum variations of a sixteenth through ITS.

Since the date of that filing, the NYSE proposed changing its minimum variation to $\frac{1}{16}$ for all stocks trading at or above 50¢, rather than the \$1.00 standard adopted in SR-CHX-97-12.² The Commission recently approved the NYSE proposal.³ As a result, the

² The Commission notes that, at the time the CHX filed proposed rule SR-CHX-97-12, NYSE Rule 62 provided:

³ Securities Exchange Act Release No. 38744 (June 18, 1997) (granting temporary approval to a proposed rule change by the NYSE that, among other things, replaced eighths with sixteenths as the minimum variation for certain securities).

purpose of this proposed rule change is to adopt a minimum variation of $\frac{1}{16}$ for securities trading at or above 50¢, and a minimum variation of $\frac{1}{32}$ for securities trading below 50¢. Another purpose of the proposed rule change is to make a technical correction to the minimum variation for securities traded both on the American Stock Exchange ("Amex") and CHX. Specifically, rather than using a minimum variation of $\frac{1}{16}$ for securities trading above 25¢, the $\frac{1}{16}$ variation will be used for securities traded at or above 25¢.

The proposed rule change will only be effective until such time as the Commission approves SR-CHX-97-13, a proposed rule change regarding general changes to the Exchange's Rules on trading variations.⁴

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act⁵ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed rule Change From Members, Participants, or Others

The Exchange has neither solicited nor received written comments.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

⁴ Securities Exchange Act Release No. 28718 (June 5, 1997), 62 FR 32132 (June 12, 1997) (publishing notice of SR-CHX-97-13).

Bids or offers in stocks above one dollar per share shall not be made at a less variation than $\frac{1}{8}$ of one dollar per share; in stocks below one dollar but above $\frac{1}{2}$ of one dollar per share, at a less variation than $\frac{1}{16}$ of one dollar per share; in stocks below $\frac{1}{2}$ of one dollar per share, at a less variation than $\frac{1}{32}$ of one dollar per share . . . provided that the Exchange may fix variations of less than the above for bids and offers in specific issues of securities or classes of securities.

⁵ 15 U.S.C. 78f(b)(5).

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, 450 Fifth Street, N.W., Washington, D.C. 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-97-16 and should be submitted by July 23, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

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 and Section 11A of the Act.⁶ The CHX's proposal to conform its minimum increments to those of the Amex and the NYSE is reasonable because the Commission has previously found that the primary markets' trading variation are consistent with the Act. Thus, it is appropriate in this instance for the Exchange to match its competitors' minimum trading variations.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Exchange intended to conform its rule regarding minimum increments to those of the primary markets when it submitted its proposed rule change. This proposal rule change will enable the CHX to competitively quote such securities in the manner that it originally intended when it submitted its proposals. Requiring the Exchange to wait the full statutory review period for the proposed rule change would unnecessarily delay the implementation of the CHX's original intent. At the same time, the proposal is effective only until the Commission acts on File No. SR-CHX-97-13.⁷ This will provide the

⁶ 15 U.S.C. 78f(b) and 78k-1. In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* § 78c(f).

⁷ File No. SR-CHX-97-13 is a companion filing that requests permanent approval of the procedures described herein. Securities Exchange Act Release No. 28718 (June 5, 1997), 62 FR 32132 (June 12,

Commission with a sufficient period to receive and assess comments on SR-CHX-97-16. Therefore, the Commission believes it is consistent with Section 6(b)(5) and Section 19(b)(2) of the Act to grant accelerated approval on a temporary basis to the proposed rule change.⁸

V. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-CHX-97-16) is hereby approved on an accelerated basis until the Commission acts on File No. SR-CHX-97-13.

For the commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

[FR Doc. 97-17253 Filed 7-1-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38772; File No. SR-CHX-97-09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to an Amendment to Rule 37 of Article XX Concerning the Definition of Best Bid or Offer in the BEST and MAX Rules

June 25, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on May 9, 1997, as amended on June 24, 1997,² the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission

1997). File Nos. SR-CHX-97-11 SR-CHX-97-12, and SR-CHX-97-14 are related filing whose effectiveness is linked to SR-CHX-97-13. See Securities Exchange Act Release Nos. 38704 (May 30, 1997), 62 FR 31467 (June 9, 1997) (approving File No. SR-CHX-97-11 on a temporary basis; reducing the trading increment from eighths to sixteenths for securities that are traded on the Exchange and on Nasdaq, 38717 (June 6, 1997), 62 FR 32134 (June 12, 1997) (approving File No., SR-CHX-97-12 on a temporary basis, reducing the trading increment from eighths to sixteenths for securities that are traded on the Exchange and on the NYSE), and 38719 (June 5, 1997), 62 FR 32131 (June 12, 1997) (approving File No. SR-CHX-97-14 on a temporary basis; a similar reduction in the trading increment for securities that are traded only on the Exchange).

⁸ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² On June 24, 1997 the CHX filed Amendment No. 1 to its proposal with the Commission. The amendment removes the words "size and price" from the definition of the best bid or offer. See letter from David T. Rusoff, Foley & Lardner to Ivette Lopez, Assistant Director, SEC (June 24, 1997).

("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 proposes to amend Rule 37 of Article XX of the Exchange'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, 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

As described below, the purpose of the proposed rule change is to amend Rule 37 of Article XX (the BEST Rule and the MAX Rule) to correct the definitions of best bid or offer found throughout this Rule so as to reflect existing Exchange practice.

Definition of Best Bid and Offer

The Exchange's BEST Rule (Art. XX, Rule 37(a)) currently states that, subject to certain exceptions, all agency market orders are guaranteed an execution on the basis of the best bid disseminated pursuant to SEC Rule 11Ac1-1³ on a sell order or the best offer disseminated pursuant to SEC Rule 11Ac1-1 on a buy order (collectively, the national best bid or offer ("NBBO")). While the NBBO is utilized for NASDAQ/NM Securities traded on the Exchange, the Exchange has always utilized the Intermarket Trading System best bid or offer ("ITS BBO")⁴ for Dual Trading System Securities (i.e., securities also traded on

the NYSE or the Amex). As a result, instead of using the NBBO definition in the BEST Rule and MAX Rule,⁵ the Exchange believes that it is more accurate to describe the BEST Rule guarantee and the MAX Rule executions in terms of the ITS BBO for Dual Trading System issues.

This definitional change merely reflects an inadvertent error in the drafting of the BEST Rule and the MAX Rule and will not result in any systems changes.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)(5)⁶ of the Act, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not 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

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 constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange pursuant to Section 19(b)(3)(A) of the Act⁷ and subparagraph (e) of Rule 19b-4 thereunder.⁸

At any time within 60 days of the filing of the proposed rule change,⁹ 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, 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Chicago Stock Exchange. All submissions should refer to File No. SR-CHX-97-09 and should be submitted by July 23, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-17254 Filed 7-1-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38777; File No. SR-CHX-97-6]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Listing and Trading Standards for Portfolio Depository Receipts

June 26, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 17, 1997,¹

¹⁰ 17 CFR 200.30-3(a)(12).

¹ On June 4, 1997, the Exchange filed Amendment No. 1 to this rule filing. Amendment No. 1 serves to supersede entirely the Exchange's rule filing. Therefore, this notice incorporates Amendment No. 1 in its entirety. On June 17, 1997 and June 24, 1997, the Exchange filed Amendment Nos. 2 and 3 respectively; Amendment No. 3 replaces Amendment No. 2 in its entirety and the substance of Amendment No. 3 is incorporated into this

³ 17 CFR 240.11Ac1-1.

⁴ The ITS BBO is defined as the best bid/offer quote among the American, Boston, Cincinnati, Chicago, New York, Pacific, Philadelphia or the Intermarket Trading System/Computer Assisted Execution System quote, as appropriate.

⁵ The MAX Rule (Art. XX, Rule 37(b)) sets forth the procedures applicable to the automated execution of orders entered into the MAX System.

⁶ 15 U.S.C. 78f(b)(5).

⁷ U.S.C. 78s(b)(3)(a).

⁸ CFR 240.19b-4.

⁹ The 60 day abrogation period commences from June 24, 1997, the date of the submission of the substantive amendment.

the Chicago Stock Exchange, Inc. ("CHX" 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 proposes to add Rule 25 to Article XXVIII of CHX's rules relating to the listing and trading of Portfolio Depositary Receipts ("PDRs").

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

The Exchange proposes to adopt new Rule 25 under Article XXVIII to accommodate the trading of PDRs, securities which are interests in a unit investment trust ("Trust") holding a portfolio of securities linked to an index. Each Trust will provide investors with an instrument that (i) closely tracks the underlying portfolio of securities, (ii) trades like a share of common stock, and (iii) pays holders of the instrument periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses (as described in the Trust prospectus).

Under the proposal, the Exchange may list and trade, or trade pursuant to

unlisted trading privileges, PDRs based on one or more stock indexes or securities portfolios. PDRs based on each particular stock index or portfolio shall be designated as a separate series and identified by a unique symbol. The stocks that are included in an index or portfolio on which PDRs are based shall be selected by the Exchange, or by such other person as shall have a proprietary interest in and authorized use of such index or portfolio, and may be revised as deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

In connection with an initial listing, the Exchange proposes that, for each Trust of PDRs, the Exchange will establish a minimum number of PDRs required to be outstanding at the time of commencement of Exchange trading, and such minimum number will be filed with the Commission in connection with any required submission under Rule 19b-4 for each Trust. If the Exchange trades a particular PDR pursuant to unlisted trading privileges, the Exchange will follow the listing exchange's determination of the appropriate minimum number.

Because the Trust operates on an open-end type basis, and because the number of PDR holders is subject to substantial fluctuations depending on market conditions, the Exchange believes it would be inappropriate and burdensome on PDR holders to consider suspending trading in or delisting a series of PDRs, with the consequent termination of the Trust, unless the number of holders remains severely depressed during an extended time period. Therefore, twelve months after the formation of a Trust and commencement of Exchange trading, the Exchange will consider suspension of trading in, or removal from listing of, a Trust when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(a) If the Trust on which the PDRs are based has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of the PDRs for 30 or more consecutive trading days; or

(b) If the index on which the Trust is based is no longer calculated; or

(c) If such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

A Trust shall terminate upon removal from Exchange listing and its PDRs will be redeemed in accordance with provisions of the Trust prospectus. A Trust may also terminate under such other conditions as may be set forth in

the trust prospectus. For example, the sponsor of the trust ("Sponsor"), following notice to PDR holders, shall have discretion to direct that the Trust be terminated if the value of securities in such Trust falls below a specified amount.

Trading of PDRs. Dealings in PDRs on the Exchange will be conducted pursuant to the Exchange's general agency-auction trading rules. The Exchange's general dealing and settlement rules will apply, including its rules on clearance and settlement of securities transactions and its equity margin rules. Other generally applicable Exchange equity rules and procedures will also apply, including, among others, rules governing the priority, parity and precedence of orders and the responsibilities of specialists.

With respect to trading halts, the trading of PDRs will be halted, along with the trading of all other listed or traded stocks, in the event the "circuit breaker" thresholds of CHX Article IX, Rule 10A are reached. In addition, for PDRs tied to an index, the triggering of futures price limits for the S&P 500 Composite Price Index ("S&P 500 Index"), S&P 100 Composite Price Stock Index ("S&P 100 Index"), or Major Market Index ("MMI") futures contracts will not, in itself, result in a halt in PDR trading or a delayed opening. However, the Exchange could consider such an event, along with other factors, such as a halt in trading in S&P 100 Index Options ("OEX"), S&P 500 Index Options ("SPX"), or MMI Options ("XMI"), in deciding whether to halt trading in PDRs.

Under the proposed rule change, the Exchange will issue a circular to members informing them of Exchange policies regarding trading halts in such securities. The circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Article XXXVI, Rule 19, the Exchange's rule governing trading halts for Basket trading (except that the term "Basket" shall be replaced by "stock index") in exercising its discretion to halt or suspend trading. For a PDR based on an index, these factors would include whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value, or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Disclosure. Proposed Rule 25 of Article XXVIII requires that members and member organizations provide to all

notice, See letter from J. Craig Long, Attorney, Foley & Lardner, to Ivette Lopez, Assistant Director, Market Regulation, Commission, dated May 27, 1997 ("Amendment No. 1") and letters from David T. Rusoff, Attorney, Foley & Lardner, to Sharon Lawson, Senior Special Counsel, Market Regulation, Commission, dated June 13, 1997 ("Amendment No. 2") and June 18, 1997 ("Amendment No. 3") respectively.

purchasers of each series of PDRs a written description of the terms and characteristics of such securities, in a form approved by the Exchange, not later than the time a confirmation of the first transaction in such series of PDRs is delivered to such purchaser. In this regard, a member or member organization carrying an omnibus account for a non-member broker-dealer will be required to inform such non-member that execution of an order to purchase PDRs for such omnibus account will be deemed to constitute an agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to member and member organizations. The written description must be included with any sales material on that series of PDRs that a member provides to customers or the public. Moreover, other written materials provided by a member or member organization to customers or the public making specific reference to a series of PDRs as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of PDRs] is available from your broker. It is recommended that you obtain and review such circular before purchasing [the series of PDRs]. In addition, upon request you may obtain from your broker a prospectus for [the series of PDRs]." Additionally, as noted above, the Exchange requires that members and member organizations provide customers with a copy of the prospectus for a series of PDRs upon request.

Two existing PDRs, Standard & Poor's Depository Receipts ("SPDRs") and Standard & Poor's MidCap 400 Depository Receipts ("MidCap SPDRs"), are traded on the American Stock Exchange ("Amex").² CHX is not asking for permission to list SPDRs or MidCap SPDRs at this time, but rather will trade SPDRs and MidCap SPDRs pursuant to unlisted trading privileges once the generic listing standards set forth herein are approved. Pursuant to SEC Rule 12f-5, in order to trade a particular class or type of security pursuant to unlisted trading privileges, CHX must have rules providing for transactions in such class or type of security. The Amex has enacted listing standards for PDRs, and CHX's proposed rule change is designed to create similar standards for PDR listing and/or trading on CHX. As stated above, CHX proposes to trade SPDRs and MidCap SPDRs pursuant to unlisted

trading privileges upon approval of this rule filing.

If at a later time CHX and the issuer of the product desire to list SPDRs and MidCap SPDRs or any other PDRs on the Exchange, the Exchange will request SEC approval for that listing in a separate proposed rule change filed pursuant to Section 19(b) of the Act. Additionally, in the event a new PDR is listed on another exchange using listing standards that are different than current CHX listing standards or the CHX listing standards proposed in this filing, the CHX will file a proposed rule change pursuant to Section 19(b) of the Act to adopt the listing standard before it trades that PDR pursuant to unlisted trading privileges.

Notwithstanding the foregoing discussion concerning the applicability of the Exchange's equity trading rules to PDRs generally, the Intermarket Trading System ("ITS") rules will not be applicable to SPDRs and MidCap SPDRs traded on the CHX pursuant to unlisted trading privileges until SPDRs and MidCap SPDRs are designated as ITS Securities. Currently, ITS cannot accommodate trading in a minimum variation of $\frac{1}{64}$ and ITS has not made a determination that ITS is applicable to securities trading in $\frac{1}{64}$ ths. When such changes are made, the CHX intends to request that SPDRs and MidCap SPDRs be designated as ITS Securities. At such time, the ITS rules will apply to trading in SPDRs and MidCap SPDRs.

The current inapplicability of the ITS rules means, among other things, that the ITS trade-through rule will not apply. However, the CHX's BEST Rule, Article XX, Rule 37(a), will still be applicable to SPDRs and MidCap SPDRs, thereby guaranteeing the execution of certain agency orders on the basis of the size and price associated with the best bid (for a sell order) or best offer (for a buy order) among the American, Boston, Cincinnati, Chicago, New York, Pacific, Philadelphia and the Intermarket Trading System/Computer Assisted Execution System quote, which quote is defined in SR-CHX-97-9 as the "ITS BBO."³ Because SPDRs and MidCap SPDRs are not trade in all of these market centers, for purposes of this filing only, the ITS BBO is limited

to those market centers listed above that trade SPDRs and MidCap SPDRs.⁴ For example, if a CHX specialist receives an agency limit order for a SPDR, so long as all of the eligibility requirements of the BEST Rule are met, the specialist will be required to execute that order if there has been a price penetration in the primary market. In addition, if the Amex specialist is disseminating the best quote for SPDRs, the CHX specialist will be required to execute eligible agency market orders for SPDRs at the price quoted on the Amex, even if the CHX specialist is not, himself, quoting at that price. The CHX SPDR and MidCap SPDR specialist will have the ability to monitor the current quotations being disseminated by the Amex specialist on a real-time basis. The quotations for SPDRs and MidCap SPDRs are disseminated through the Consolidated Quotation System and are available for viewing by the CHX specialist at his or her post. Finally, the CHX specialist will have access to the Amex through the Amex's PER System (albeit through a correspondent firm). This will enable the CHX specialist to place limit orders on the Amex specialist's book or send market orders to the Amex specialist for execution against the Amex specialist's quote. These factors should minimize the possibility that a CHX originated trade-through will occur.

With respect to the above discussion concerning disclosure issues, because SPDRs and MidCap SPDRs will be traded pursuant to unlisted trading privileges and will not be listed on the CHX at this time, the CHX does not intend to create its own product description to satisfy the requirements of proposed Rule 25(c) of Article XXVIII, which requires members to provide to purchasers, a written description of the terms and characteristics of SPDRs and MidCap SPDRs in a form approved by the Exchange. Instead, the CHX will deem a member or member organization to be

⁴ Under the BEST Rule, Exchange specialists are required to guarantee executions of all agency market and limit orders for Dual Trading System issues from 100 up to and including 2099 shares. Subject to the requirements of the short sale rule, the specialist must fill all agency market orders at a price equal to or better than the ITS BBO. For all agency limit orders in Dual Trading System issues, the specialist must fill the order if: (1) the ITS BBO at the limit price has been exhausted in the primary market; (2) there has been a price penetration of the limit in the primary market (generally known as a trade-through of a CHX limit order); or (3) the issue is trading at the limit price on the primary market unless it can be demonstrated that the order would not have been executed if it had been transmitted to the primary market or the broker and specialist agree to a specific volume related to, or other criteria for, requiring a fill.

² SPDRs and MidCap SPDRs are defined and discussed more fully below.

³ The Commission notes that SR-CHX-97-9, as amended to remove the phrase "size and price associated with the" from the filing, has become effective. See Securities Exchange Act Release No. 38772 (June 25, 1997). In addition, CHX represents that it will submit a separate rule filing pursuant to Section 19(b)(2) of the Act further amending the BEST Rule to add size and price to the definition of the ITS/BBO. Phone conversation between David Rusoff, Attorney, Foley & Lardner, and David Sieradzki, Attorney, Market Regulation, Commission, on June 17, 1997.

in compliance with this requirement if the member delivers either (i) the current product description produced by the Amex from time to time, or (ii) the current prospectus for the SPDR or MidCap SPDR, as the case may be. It will be the member's responsibility to obtain these materials directly from the Amex and/or the distributor of the SPDR and MidCap SPDR for forwarding to purchasers in the time frames prescribed by CHX and SEC rules. The CHX will notify members and member organizations of this requirement in a notice to members.

The remainder of this section of the filing merely provides background information on SPDRs and MidCap SPDRs. The information, taken mostly from SR-AMEX-94-52 and SR-AMEX-92-18, describes the structure and mechanics of SPDRs and MidCap SPDRs, but is not critical for the SEC's approval of the generic listing standards.

SPDRs and MidCap SPDRs Generally. On December 11, 1992, the Commission approved Amex Rules 1000 et seq.⁵ to accommodate trading on the Amex of PDRs generally. The Sponsor of each series of PDRs traded on the Amex is PDR Services Corporation, a wholly-owned subsidiary of the Amex. The PDRs are issued by a Trust in a specified minimum aggregate quantity ("Creation Unit") in return for a deposit consisting of specific numbers of shares of stock plus a cash amount.

The first Trust to be formed in connection with the issuance of PDRs was based on the S&P 500 Index, known as Standard & Poor's Depository Receipts ("SPDRs"). SPDRs have been trading on the Amex since January 29, 1993. The second Trust to be formed in connection with the issuance of PDRs was based on the S&P MidCap 400 Index,⁶ known as Standard & Poor's Midcap 400 Depository Receipts ("Midcap SPDRs").⁷ The Sponsor of the two Trusts has entered into trust agreements with a trustee in accordance with Section 26 of the Investment Company Act of 1940. PDR Distributors, Inc. ("Distributor") acts as underwriter of both SPDRs and MidCap SPDRs on an agency basis. The Distributor is a

registered broker-dealer, a member of the National Association of Securities Dealers, Inc., and a wholly-owned subsidiary of Signature Financial Group, Inc.

SPDRs. The Trustee of the SPDR Trust will have the right to vote any of the voting stocks held by the Trust, and will vote such stocks of each issuer in the same proportion as well other voting shares of that issuer voted.⁸ Therefore, SPDR holders will not be able to directly vote the shares of the issuers underlying the SPDRs.

The Trust will issue SPDRs in exchange for "Portfolio Deposits" of all of the S&P 500 Index securities, weighted according to their representation in the Index.⁹ An investor making a Portfolio Deposit into the Trust will receive a "Creation Unit" composed of 50,000 SPDRs.¹⁰ The price of SPDRs will be based on a current bid/offer market. Amex has designated $\frac{1}{64}$ ths as the minimum fraction for trading in SPDRs. The CHX has proposed this same minimum variation for the trading of SPDRs on the CHX. SPDRs will not be redeemable individually, but may be redeemed in Creation Unit size (i.e., 50,000 SPDRs). Specifically, a Creation Unit may be redeemed for an in-kind distribution of securities identical to a Portfolio Deposit.¹¹ PDR Distribution Services, Inc., a registered broker-dealer, will act as underwriter of SPDRs on an agency basis.

MidCap SPDRs. All orders to create MidCap SPDRs in Creation Unit size aggregations, which has been set at 25,000, must be placed with the Distributor, and it will be the responsibility of the Distributor to transmit such orders to the Trustee.

⁸The Trustees will abstain from voting if the stocks held by the Trust cannot be voted in proportion as all other shares of the securities are voted.

⁹A Portfolio Deposit also will include a cash payment equal to a pro rata portion of the dividends accrued on the Trust's portfolio securities since the last dividend payment by the Trust, plus or minus an amount designed to compensate for any difference between the net asset value of the Portfolio Deposit and the S&P 500 Index caused by, among other things, the fact that a Portfolio Deposit cannot contain fractional shares.

¹⁰The Trust is structured so that the net asset value of an individual SPDR should equal one-tenth of the value of the S&P 500 Index.

¹¹An investor redeeming a Creation Unit will receive Index securities and cash identical to the Portfolio Deposit required of an investor wishing to purchase a Creation Unit on that particular day. Since the Trust will redeem in kind rather than for cash, the Trustee will not be forced to maintain cash reserves for redemptions. This should allow the Trust's resources to be committed as fully as possible to tracking the S&P 500 Index, enabling the Trust to track the Index more closely than other basket products that must allocate a portion of their assets for cash redemptions.

To be eligible to place orders to create MidCap SPDRs as described below, an entity or person either must be a participant in the Continuous Net Settlement ("CNS") system of the National Securities Clearing Corporation ("NSCC") or a Depository Trust Company ("DTC") participant. Upon acceptance of an order to create MidCap SPDRs, the Distributor will instruct the Trustee to initiate the book-entry movement of the appropriate number of MidCap SPDRs to the account of the entity placing the order. MidCap SPDRs will be maintained in book-entry form at DTC.

Payment with respect to creation orders placed through the Distributor will be made by (1) the "in-kind" deposit with the Trustee of a specified portfolio of securities that is formulated to mirror, to the extent practicable, the component securities of the underlying index or portfolio, and (2) a cash payment sufficient to enable the Trustee to make a distribution to the holders of beneficial interests in the Trust on the next dividend payment date as if all the securities had been held for the entire accumulation period for the distribution ("Dividend Equivalent Payment"), subject to certain specified adjustments. The securities and cash accepted by the Trustee are referred to, in the aggregate, as a "Portfolio Deposit." The Exchange anticipates that the term of the MidCap SPDR Trust will be 25 years.

Issuance of MidCap SPDRs. Upon receipt of a Portfolio Deposit in payment for a creation order placed through the Distributor as described above, the Trustee will issue a specified number of MidCap SPDRs, which aggregate number is referred to as a "Creation Unit." The Exchange anticipates that a Creation Unit will be made up of 25,000 MidCap SPDRs.¹² Individual MidCap SPDRs can then be traded in the secondary market like other equity securities. Portfolio Deposits are expected to be made primarily by institutional investors, arbitrageurs, and the Exchange specialist.

The Trustee or Sponsor will make available (1) on a daily basis, a list of the names and required number of shares for each of the securities in the current Portfolio Deposit; (2) on a minute-by-minute basis throughout the day, a number representing the value (on a per MidCap SPDR basis) of the securities portion of a Portfolio Deposit in effect on such day; and (3) on a daily basis, the accumulated dividends, less

¹²PDRs may be created in other than Creation Unit size aggregations in connection with the DTC Dividend Reinvestment Service ("DRS").

⁵See Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992).

⁶The S&P MidCap 400 Index is a capitalization-weighted index of 400 actively traded securities that includes issues selected from a population of 1,700 securities, each with a year-end market-value capitalization of between \$200 million and \$5 billion. The issues included in the Index cover a broad range of major industry groups, including industrials, transportation, utilities, and financials.

⁷See Securities Exchange Act Release No. 35534 (March 24, 1995), 60 FR 16686 (March 31, 1995).

expenses, per outstanding MidCap SPDR.

The Amex has set the minimum fractional trading variation for MidCap SPDRs at $\frac{1}{64}$ of \$1.00. The CHX has proposed this same minimum variation for MidCap SPDRs.

Redemption of MidCap SPDRs. MidCap SPDRs in Creation Unit size aggregations will be redeemable in kind by tendering them to the Trustee. While holders may sell MidCap SPDRs in the secondary market at any time, they must accumulate at least 25,000 (or multiples thereof) to redeem them through the Trust. MidCap SPDRs will remain outstanding until redeemed or until the termination of the Trust. Creation Units will be redeemable on any business day in exchange for a portfolio of the securities held by the Trust identical in weighting and composition to the securities portion of a Portfolio Deposit in effect on the date a request is made for redemption, together with a "Cash Component" (as defined in the Trust prospectus), including accumulated dividends, less expenses, through the date of redemption. The number of shares of each of the securities transferred to the redeeming holder will be the number of shares of each of the component stocks in a Portfolio Deposit on the day a redemption notice is received by the Trustee, multiplied by the number of Creation Units being redeemed. Nominal service fees may be charged in connection with the creation and redemption of Creation Units. The Trustee will cancel all tendered Creation Units upon redemption.

Distributions for MidCap SPDRs. The MidCap SPDR Trust will pay dividends quarterly. The regular quarterly ex-dividend date for MidCap SPDRs will be the third Friday in March, June, September, and December, unless that day is a New York Stock Exchange holiday, in which case the ex-dividend date will be the preceding Thursday. Holders of MidCap SPDRs on the business day preceding the ex-dividend date will be entitled to receive an amount representing dividends accumulated through the quarterly dividend period preceding such ex-dividend date net of fees and expenses for such period. The payment of dividends will be made on the last Exchange business day in the calendar month following the ex-dividend date ("Dividend Payment Date"). On the Dividend Payment Date, dividends payable for those securities with ex-dividend dates falling within the period from the ex-dividend date most recently preceding the current ex-dividend date will be distributed. The Trustee will compute on a daily basis the dividends

accumulated within each quarterly dividend period. Dividend payments will be made through DTC and its participants to all such holders with funds received from the Trustee.

The MidCap SPDR Trust intends to make the DTC DRS available for use by MidCap SPDR holders through DTC participant brokers for reinvestment of their cash proceeds. The DTC DRS is also available to holders of SPDRs. Because some brokers may choose not to offer the DTC DRS, an interested investor would have to consult his or her broker to ascertain the availability of dividend reinvestment through that broker. The Trustee will use the cash proceeds of MidCap SPDR holders participating in the reinvestment to obtain the Index securities necessary to create the requisite number of SPDRs.¹³ Any cash remaining will be distributed pro rata to participants in the dividend reinvestment.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act¹⁴ in that the proposal fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system and protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 either solicited or received.

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 to

¹³ The creation of PDRs in connection with the DTC DRS represents the only circumstances under which PDRs can be created in other than Creation Unit size aggregations.

¹⁴ 15 U.S.C. 78f(b)(5).

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, 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 will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CHX-97-6 and should be submitted by July 23, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97-17316 Filed 7-1-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38781; File No. SR-NASD-97-41]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Definition of Branch Office in Rule 3010

June 26, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 17, 1997, the National Association of Securities Dealers, Inc. ("NASD") 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

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1) (1988).

have been prepared by NASD Regulation, Inc. ("NASDR").² The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDR is proposing to amend Conduct Rule 3010 of the NASD, to create another exception to the definition of branch office. Below is the text of the proposed rule change. Proposed new language is in italics.

3010. Supervision

(g) Definitions

* * * * *

(2) "Branch Office" means any location identified by any means to the public or customers as a location at which the member conducts an investment banking or securities business, excluding:

* * * * *

(D) any location where a person conducts business on behalf of the member occasionally and exclusively by appointment for the convenience of customers, so long as each customer is provided with the address and telephone number of the branch office or OSJ of the firm from which the person conducting business at the non-branch location is directly supervised.

* * * * *

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 NASD 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 NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

²The proposed rule change has not yet been approved by the NASD Board of Governors. Accordingly, the NASD has consented to an extension of the period of time specified in Section 19(b)(2) of the Act until at least thirty-five days after it has filed an amendment advising the Commission of the action taken by the NASD Board of Governors. See letter from Craig L. Landauer, Associate General Counsel, NASD Regulation, to Mignon McLemore, Division of Market Regulation, SEC, dated June 24, 1997.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The definition of a branch office, found in NASD Rule 3010, includes any location identified by any means to the public or customers as a location at which the member conducts an investment banking or securities business, subject to several exceptions. If a business location of a member meets the definition of a branch office, such office must be identified to the NASD through the filing of a Schedule E to Form BD and such location is subject to an annual NASD fee of \$75.00. Several members have asked for guidance from NASDR staff as to the application of the branch office registration requirements where a business location is used exclusively for appointments from time to time between registered representatives and customers.

This issue may arise under networking arrangements between NASD members and banks. In this context, registered persons of the member may periodically schedule appointments with bank customers at a bank location where the NASD member conducts no securities activities. Under the Interagency Statement on Retail Sales of Non-deposit Investment Products, banks are required to use signage at the place of the appointment to identify the NASD member that employs the registered person.³ This use of signage at the appointment may imply the need for the location to register as a branch office. The NASD is proposing to create another exception to the definition of branch office to address this type of situation.

The proposed amendment would add language to paragraph (g) of Rule 3010 to exempt from the branch office definition certain locations where a person conducts business for the member firm occasionally and by appointment only for the convenience of customers, and where the member maintains no other tangible presence. To be consistent with other provisions of Rule 3010, the person conducting business at such locations would be required to provide each customer with the address and telephone number of the branch office or office of supervisory jurisdiction ("OSJ") of the firm from which the person who is conducting the meeting is supervised.

The NASD believes that the proposed rule change is consistent with the

³ Board of Governors of the Federal Reserve System *et al.*, Interagency Statement on Retail Sales of Non-deposit Investment Products, at 10 (February 15, 1994).

provisions of Section 15A(b)(6)⁴ of the Act. The NASD believes the proposed rule change will provide clarification regarding branch registration requirements and will ease the filing burden of many members without compromising the ability to monitor compliance.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD 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.

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

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

⁴ Section 15A(b)(6) requires that the rules of the Association be designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and in general, to protect investors and the public interest.

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 the file number in the caption above and should be submitted by July 23, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-17319 Filed 7-1-97; 8:45 am]

BILLING CODE 8010-01-M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities; Submissions for OMB Review

This notice lists information collection packages that have been sent to the Office of Management and Budget (OMB) for clearance, in compliance with Public Law 104-13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

Childhood Disability Evaluation 0960-0568. The information collected on form SSA-538 is used by SSA and the State Disability Determination Services (DDS) to record medical and functional findings concerning the severity of impairments of children claiming SSA benefits based on disability. The form is used for initial determinations of eligibility, in appeals and in initial continuing disability reviews. The respondents are State DDS offices.

Number of Respondents: 1,066,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 355,333 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses: (OMB)

Office of Management and Budget,
OIRA, Attn: Laura Oliven, New
Executive Office Building, Room
10230, 725 17th St., NW.,
Washington, D.C. 20503

(SSA)

Social Security Administration,
DCFAM, Attn: Nicholas E.
Tagliareni, 1-A-21 Operations
Bldg., 6401 Security Blvd.,

Baltimore, MD 21235

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965-4125 or write to him at the address listed above.

Dated: June 25, 1997.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 97-17242 Filed 7-1-97; 8:45 am]

BILLING CODE 4190-29-U

DEPARTMENT OF STATE

[Public Notice 2565]

United States International Telecommunications Advisory Committee Radiocommunication Sector The Radiocommunication Assembly and The Radiocommunication Advisory Group; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Radiocommunication Sector will meet on 8 July 1997 at 10:00 A.M. to 12:00 noon, in Room 1207 at the Department of State, 2201 C Street, NW., Washington, DC 20520 to prepare for two international meetings of the International Telecommunication Union: the Radiocommunication Assembly and the Radiocommunication Advisory Group. The short lead time for this meeting results from the need to develop an early preparatory effort to assure United States interests are fully addressed.

The Radiocommunication Assembly normally meets every two years and is responsible for the structure, program and approval of radiocommunication studies. The next meeting will be held October 20-24, 1997.

Preparations will also begin for a special Radiocommunication Advisory Group meeting September 10-12, 1997. The meeting will review the preparatory process for preparing for World Radio Conferences and alternative methods for study of operational/regulatory procedures.

Members of the General Public may attend these meetings and join in the discussions, subject to the instructions of the Chairman, John T. Gilsenan.

Note: If you wish to attend please send a fax to 202-647-7407 not later than 24 hours before the scheduled meeting. On this fax, please include subject meeting, your name, social security number, and date of birth. One of the following valid photo ID's will be required for admittance: U.S. driver's license

with your picture on it, U.S. passport, U.S. Government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the "C" Street Main Lobby.

Dated: June 26, 1997.

Warren G. Richards,

Chairman, U.S. ITAC for ITU-Radiocommunication Sector.

[FR Doc. 97-17427 Filed 6-30-97; 9:39 am]

BILLING CODE 4710-45-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Application for Transport Category Type Certificate for Military Surplus U.S. Army Model UH-1H and UH-1V Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed type certification basis.

SUMMARY: This notice provides information and invites comments concerning the proposed transport category type certification basis for the Garlick Helicopters Incorporated (GHI) Model GH205A helicopter. GHI has applied for a transport category standard type certificate for U.S. Army surplus Model UH-1H and UH-1V helicopters that would be designated as Model GH205A's. This nonrulemaking document is published in the interest of informing the public of this application under the provisions of 14 CFR 21.27 (§ 21.27). Public comments concerning the proposed certification basis will be considered in determining the airworthiness standards applicable to the type certification of these surplus military helicopters in the transport category.

DATES: Comments on this notice must be received on or before September 2, 1997.

ADDRESSES: Comments must be mailed in duplicate to the Federal Aviation Administration, Rotorcraft Directorate, Fort Worth, Texas 76193-0110.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aerospace Engineer, FAA, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193-0110, telephone (817) 222-5116, fax (817) 222-5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

This notice of the proposed type certification basis of the Model GH205A is part of the FAA's continuing efforts to keep the public informed of the type certification programs conducted by the

⁵ 17 CFR 200.30-3(a)(12) (1996).

FAA. Interested parties are invited to provide comments, written data, views, or arguments relevant to the proposed type certification basis of the Model GH205A as contained in this notice. Comments should be submitted in duplicate to the address specified above. All comments received on or before the closing date specified will be considered by the Administrator before the type certification basis is established.

Availability of Additional Copies of Notice

Any person may obtain a copy of this notice by submitting a request to the address noted in the **ADDRESSES** paragraph above or by calling (817) 222-5110.

Background

GHI, Hamilton, Montana, has applied for a transport category standard type certificate under the provisions of § 21.27, "Issue of type certificate: Surplus aircraft of the Armed Forces of the United States," for former U.S. Army Model UH-1H and UH-1V helicopters, to be redesignated as GHI Model GH205A helicopters. The later military UH-1V model contains avionics and internal equipment changes only and is considered identical to the UH-1H model for the purposes of FAA certification. The FAA Denver Aircraft Certification Office (ACO) received the original GHI type certificate application dated December 9, 1993, and held a Preliminary Type Certification Board Meeting on November 1, 1994. The program is large when viewed in terms of its requirements for FAA resources, applicant type design submittals, and policy considerations. Based on its potential impact on FAA certification operations, the program was transferred to the Rotorcraft Certification Office, Southwest Region, by mutual agreement of the FAA and the applicant on June 12, 1995. Two familiarization meetings were held June 29, 1995, and July 12, 1995, in Fort Worth, Texas, to discuss engine and airframe certification issues, respectively. As a result, the FAA determined the program was viable and initiated certification activity.

Section 21.27 provides two methods for obtaining a type certificate on a military surplus aircraft designed and constructed in the United States and accepted for operational use by the U.S. Armed Forces. The type certificate may be obtained if the surplus aircraft (1) is a counterpart of a previously type certificated civil aircraft, or (2) meets the airworthiness standards in effect when accepted by the U.S. Armed

Forces, subject to any special conditions or later amendments necessary to ensure an adequate level of airworthiness for the aircraft. The U.S. Army procurement offices in St. Louis, Missouri, state that the UH-1H model helicopter was first accepted for operational use on September 8, 1966, and no similar civil version was certified until June 13, 1968. Hence, no similar civil model was certificated prior to the first operational use of the UH-1H model helicopter. The Model GH205A must therefore comply with the airworthiness standards specified in § 21.27(f) at the amendment level in effect on September 8, 1966, which is part 29 through Amendment 1.

Section 21.27(d) permits the FAA to relieve an applicant from strict compliance with an airworthiness standard in the certification basis, provided the stated conditions are satisfied. In addition § 21.27(e) permits the FAA to adopt special conditions or later airworthiness requirements than those stated in the procedural rule to ensure an adequate level of airworthiness of the type design. Special conditions are airworthiness safety standards promulgated in accordance with the procedural rules of §§ 11.28 and 21.16, which include public participation, and establish a level of safety equivalent to that contained in the regulations.

The proposed certification basis addresses FAA general concerns regarding the certification of military aircraft, compliance with current external noise criteria, and the ability to identify all critical components as to origin and service history. In that regard, certain later amendments of the regulation will be imposed. The applicant would be required to comply with basic airframe airworthiness standard part 29 effective August 12, 1965, with selected later revisions.

Regarding the proposed certification basis for the military T53-L-13 engines, § 21.27(c) allows the FAA to approve, for use on the GH205A aircraft, those engines installed on surplus UH-1H and UH-1V model helicopters. That approval would be based on a showing that the previous military qualifications, acceptance, and service records provide substantially the same level of airworthiness as would be provided if the engines were type certificated under part 33. In addition, § 21.27(e) allows the FAA to require special conditions if compliance with the regulations in part 33 in effect at the time the engines were originally accepted by the military would not ensure an adequate level of safety. Based on §§ 21.27 (c) and (e), the FAA has determined that the engines may be approved using the standards in

Civil Air Regulations (CAR) 13, Amendments 13-1, 13-2, and 13-3; § 33.14, Amendment 10; and § 33.4, Amendment 9, and special conditions. These engines, or engine components, will only be eligible for installation on Model GH205A aircraft.

Type Certification Process

The statutory prerequisite for the issuance of a type certificate (49 U.S.C. 44704) is a finding by the Administrator that the aircraft is properly designed and manufactured, performs properly, and meets the regulations and minimum standards prescribed under 49 U.S.C. 44701(a). Pursuant to 49 U.S.C. 44701(a) and part 21, a type certificate is issued after:

1. All applicable airworthiness, noise, fuel venting, and engine emission requirements of the CFR have been met, including the completion of required functional and reliability tests to ensure that the helicopter is considered safe in its operational environment; and

2. The Administrator has found no feature or characteristic that makes the helicopter unsafe for the category in which certification is desired.

Proposed Type Certification Basis

The proposed type certification basis presented herein represents the type certification basis required by § 21.27(f), specifically, the regulations in effect on the date that the military models were first accepted by the U.S. Army, and later regulatory amendments, deemed appropriate by the FAA or elected by the applicant. The initial military acceptance date for the Model UH-1H helicopter was September 8, 1966, establishing the baseline airframe airworthiness certification basis as part 29, Category B, Amendment 1. Similarly, the baseline engine certification basis is CAR 13, Amendments 13-1, 13-2, and 13-3.

In this certification, the FAA has determined that instructions for continued airworthiness are to be provided for the airframe in accordance with § 29.1529, Amendment 20, and for the engine in accordance with § 33.4, Amendment 9. The applicant would be required to comply with these later airworthiness standards and with the engine rotating components low cycle fatigue (start-stop stress) life determination requirements of § 33.14, Amendment 10.

The applicant will be required to demonstrate compliance with part 36, Appendix H, at the amendment level effective on the date of type certification to stage 2 noise level requirements. The FAA will grant an additional 2 EPNdb noise signature relief in accordance with

§ 36.805(c), based on the FAA's finding that the Model GH205A will be classified as the first civil version of a related military-design helicopter.

In determining the certification basis, the FAA has considered the operating experience of similar civil helicopter models manufactured by Bell Helicopter Textron, Inc., and the service history for the UH-1H and UH-1V model military helicopters available from the U.S. Army. For example, as provided by § 21.27(d), the single servo valve, single hydraulic assist primary flight control system design peculiar to the military UH-1H and UH-1V configuration has been found by the FAA to provide substantially the same level of airworthiness as specified in § 29.695, latest amendment, and that strict compliance with the requirement will impose a severe burden on the applicant. That relief from strict compliance with § 21.27(f) is based on satisfactory service experience and is contingent on an inflight demonstration that continued safe flight and landing can be executed following a loss of power assist to the flight controls at flight envelope limits.

Certification Basis Summary Table

Airframe:

Part 29, Amendment 1, Category B
Section 29.1529, Amendment 20
Part 36, Appendix H, Latest
Amendment

Engine:

CAR 13, Amendments 13-1, 13-2,
13-3
Section 33.14, Amendment 10
Section 33.4, Amendment 9

Special Conditions and Exemptions

The FAA has not identified any additional requirements for special conditions pursuant to § 21.16 nor has GHI petitioned the FAA for any exemptions relative to the certification of the Model GH205A airframe. However, the airframe certification process will address the issues of initial inspection, teardown, life limited parts, military unique parts, non-FAA approved military vendor (breakout) parts, non-FAA approved repairs and alterations, instructions for continued airworthiness, and compliance with FAA airworthiness directives (ADs) and/or military safety of flight messages. The airframe will be inspected and overhauled in accordance with an FAA approved procedure. Prior to civil certification, the airframe must pass a conformity inspection to the FAA approved Model GH205A type design.

For engines, the FAA would propose separate special conditions under the provisions of § 21.16 to establish a level

of safety substantially equivalent to that established in part 33.

The Department of Defense makes no representation as to an engine's conformance with FAA airworthiness requirements in compliance with CFRs for engines sold to the commercial aviation industry as surplus. The FAA's concern has been that once the engines enter the military service, they are no longer subject to FAA operating limitations, surveillance, and quality assurance program and, therefore, may not meet FAA standards or airworthiness requirements when released as surplus. Certain engine components may have exceeded life limits of the civil counterpart or shelf life, may not have been produced under an FAA-approved quality system, or may lack documentation, operating records, or maintenance records. In addition, § 43.13 mandates that the installer of a part have a reasonable basis for determining that, after the part is installed on a U.S. type-certificated product, the condition for the product is at least equal to the product's original or properly altered condition and that the product is in a condition for safe operation.

The FAA finds that the engine approval basis alone may not contain adequate or appropriate safety standards for engines installed in surplus military aircraft for the reasons described previously. The areas of FAA concern regarding approval of the military surplus engines are described as follows:

a. Engine and Maintenance Records

The following data would be required to support an equivalent airworthiness determination to the engine approval basis described previously:

(1) Records which establish that the engine and components and parts that have been installed since original manufacture were produced under an FAA approved production and inspection system.

(2) Complete historical records maintained by the military, the manufacturer, and any other prior owner(s) pertaining to inspection, modification, repair, alteration, maintenance, and operation of the engine from the time of acceptance by the military.

(3) A report that the engine has an equivalent level of airworthiness substantiated by the engine approval basis described previously. The report will be required to address the provisions of CAR 13 and applicable part 33 sections on a paragraph by paragraph basis.

b. Military Unique and Breakout Hardware

Military unique and breakout hardware are engine components for which the military utilized the manufacturer's design drawings and specifications, but the components were produced specifically for the military by non FAA-approved manufacturers. All military unique and breakout hardware must be replaced with parts made by FAA production approval holders.

c. Conformity

The applicant will be required to present evidence to substantiate that the engine conforms to the FAA-approved type design of its civil counterpart. The manufacturing records will include any deviation from the FAA approved type design and quality control system which was in existence at the time of manufacture. With regard to maintenance, the applicant will need to establish that any alterations, modifications, or repairs were accomplished in compliance with FAA-approved data by maintenance facilities certificated by the FAA. When this cannot be established, the alterations or repairs must be appropriately substantiated in accordance with the applicable regulations and approved by the FAA, or the altered or repaired hardware will be removed. The operating records will be examined to determine whether the engine was utilized outside of the operating envelope specified for the civil version engine including speed, temperature, torque, engine mount load and other engine limits. In addition, this records review of operational history will be required to determine if the engine has been subjected to other extreme operating conditions such as accidents, fire, and missile drone target shooting.

d. Life Limited Engine Parts

The military mission cycle, with or without the same type design, generally differs from civil aircraft mission cycles. As such, the life cycle limits for engine rotating parts (such as disks, spacers, hubs, and shafts of the compressors and turbines) and life limited stationary engine components may not be directly transferable between military and civil engines having the same hardware. To perform an accurate cycle adjustment on a military life limited engine part, there must be a record of operating hours and operating history and a known mission profile. Unlike civil missions, many military operations subject engine hardware to a wide variance in strain range, thus subjecting these components to multiple partial cycles for each flight

hour. The applicant will need to define a process for screening military engine operating and maintenance records to insure their accuracy.

For engines lacking complete, accurate time in service (TIS) and operating records, the time remaining on life limited parts is considered unknown, therefore, such parts are considered not airworthy and will be required to be removed. For those engines having accurate TIS and service history records, the applicant will be required to develop a conversion factor(s) to convert TIS of past engine usage in military service to the equivalent civil engine cycles which will include cumulative partial cycles. The procedure for such conversions must be submitted to and approved by the FAA. The applicant will need to use the published life limit in civil engine manuals for all life limited engine hardware to establish the remaining cycles. If applicable, the applicant must also develop procedures approved by the FAA to account for anticipated additional life to be consumed from other aircraft operating modes, such as external load and repetitive heavy lift operations, that are not considered in the published life in the civil engine manuals.

e. Continued Airworthiness

The applicant will be required to provide Instructions for Continued Airworthiness in accordance with § 33.4 or the civil counterpart engine manuals acceptable to the FAA. The applicant will be responsible for maintaining pertinent information concerning continued airworthiness of the engines, such as future ADs and service difficulties. In addition, the type certificate holder is responsible for corrective actions of service difficulties including support of all accident, incident, and service difficulty engineering investigations.

f. Identification Marking

The existing military identification marking (data plate) should remain attached to the engine. A supplemental data plate, in compliance with the requirements of part 45, will be used to further identify the applicant's engine.

g. Airworthiness Directives (AD's)

The applicant would be required to comply with all FAA AD's pertaining to the civil equivalent engine and certain military Time Compliance Technical Orders (i.e., the military equivalent to AD) that are approved by the FAA for the engines.

h. Overhaul

The engine will need to be in newly overhauled condition according to civil engine manuals by a maintenance facility certified by the FAA.

Post Certification Activity

The design evaluation does not end with the issuance of the type certificate. Regulations require type certificate holders to submit various reports and data on the aircraft's service experience and to perform periodic inspections and maintenance necessary to assure continued airworthiness. The FAA continues to monitor the safety performance of a design after the type design is approved and the aircraft is introduced into service through the various reports and data that the FAA receives and with postcertification design reviews when necessary. The airworthiness standards such as part 29, and the operational standards, such as parts 91 and 135, are amended from time to time to incorporate new technologies and to upgrade the existing level of safety. If an unsafe condition is found as a result of service experience and that condition is likely to exist or develop in other products of the same type, the FAA issues an AD under part 39 to require a change to the type design or to define special inspection or operational limitations. In effect, these are retroactive applications of required type design changes.

Issued in Fort Worth, Texas, on June 20, 1997.

Eric Bries,

Acting Manager, Aircraft Certification Service, Rotorcraft Directorate.

[FR Doc. 97-17299 Filed 7-1-97; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Kistler Aerospace Corp.; Intent To Prepare an Environmental Assessment

AGENCY: Federal Aviation Administration (FAA), Associate Administrator for Commercial Space Transportation, DOT.

ACTION: Notice of Intent to Prepare an Environmental Assessment.

SUMMARY: This Notice provides information to Federal, state, and local agencies, affected Native American tribes, and other interested persons on the Federal Aviation Administration's (FAA) intent to prepare an environmental assessment (EA) of Kistler Aerospace Corporation's (Kistler) proposed launch vehicle operations at

the Nevada Test Site (NTS). The FAA, as lead Federal agency, will prepare the EA in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), as part of its licensing process for the proposed Kistler project. The U.S. Department of Energy (DOE) is responsible for administering the NTS, and will be a cooperating agency in the development of the EA. Kistler proposes to use private funds to construct and operate facilities for purposes of conducting commercial space launch test and operational flights of the Kistler K-1, a reusable two-stage aerospace vehicle, at Area 18 of the DOE NTS, located in Nye County, Nevada. Proposed operations include suborbital and orbital test flights (launch and reentry). Kistler plans to launch communications and other commercial satellites as well as government satellites into low earth orbits.

Background

The Federal Aviation Administration (FAA) and the Department of Energy (DOE) are cooperating agencies in the preparation of an environmental assessment (EA) of Kistler Aerospace Corporation's (Kistler's) proposed operations at the Nevada Test Site (NTS) to determine whether those operations would have significant impacts on the environment. The EA will cover construction of facilities, ground activities (component testing, transportation and storage of fuels and explosives, etc.), pre-flight vehicle and payload preparation activities, launch, reentry and recovery/landing operations.

The FAA is the lead Federal agency in preparing the EA because of its licensing authority for commercial launch activities under 49 U.S.C. Subtitle IX, Ch. 701, formerly the Commercial Space Launch Act of 1984, as amended (CSLA). The CSLA authorizes the Secretary of Transportation to oversee, license and coordinate U.S. commercial space launch activities. Under the CSLA, the Secretary exercises this authority in a manner that ensures the protection of public health and safety, the safety of property, and national security and foreign policy interests of the United States. The Secretary has delegated this authority to the Administrator of the Federal Aviation Administration, who in turn has redelegated this authority to the Associate Administrator for Commercial Space Transportation (AST). Kistler intends to apply for a

license to conduct launch operations from NTS. Because licensing Kistler's operations is a major Federal action, compliance with NEPA is required.

The DOE is a cooperating agency regarding the proposed action because it is responsible for operating and managing the NTS. The Record of Decision for the Environmental Impact Statement for the NTS and Off-Site Locations in the State of Nevada, prepared by DOE and issued December 9, 1996, found that non-defense research activities, like the Kistler project, are an appropriate use for the NTS.

The Nevada Test Site Development Corporation (NTSDC) is a nonprofit Nevada corporation formed at the direction of Nevada Governor Miller to encourage economic development projects at NTS. DOE has designated NTSDC as a community reuse organization and issued grants to NTSDC in support of that organizational purpose. Under a use permit to be issued by the DOE to the NTSDC, the NTSDC may sub-permit use of a particular site on the NTS.

The EA will be provided for review to the States of Nevada, Utah, and Idaho because of overflights by the Kistler K-1 vehicle during proposed orbital launches and to other interested Federal, state, local, and private entities.

Proposed Action

The Proposed Action is licensing Kistler for the purpose of conducting commercial launch activities involving reentry/recovery activities as part of the launch mission. The operations will be conducted from a proposed site which would include newly-constructed facilities and infrastructure for testing and operating the Kistler K-1 reusable launch vehicle. The function of K-1 will be to launch satellites and other payloads into prescribed orbits for commercial and government customers. Under the proposed action, the FAA would license Kistler to conduct flight tests involving launches of its reusable launch vehicles and their recovery at the site and, as appropriate, determine approval for ongoing launch/flight operations at NTS for the purpose of launching communications and other commercial satellites as well as government satellites into low earth orbits. The FAA would also evaluate reentry and recovery/landing operations as part of launch missions. The activities within the NTS will include the conduct of launch and recovery operations utilizing a vehicle processing facility, a launch pad, and vehicle landing/recovery area. One to three suborbital test flights, followed by one to three orbital test flights would be

conducted, with the first test flight scheduled for 1998. Following successful test flights, and upon issuance of required FAA approvals, Kistler plans to begin commercial operations, on northerly (84-92 degree inclination) and northeasterly headings (52-60 degree inclinations). The northerly flights would overfly the states of Nevada and Idaho before entering low earth orbit. The northeasterly flights would overfly the states of Nevada, Utah, and Wyoming before entering low earth orbit. Operating plans estimate 6 test launches in 1998—3 suborbital and 3 orbital, and a commercial launch capability of one launch per week by 2005, depending on commercial market requirements.

Alternative Sites

Proposed locations for the Kistler facilities are being identified by DOE through a siting process that considers existing and planned land uses at the NTS. Site selection within the NTS also takes into consideration alternatives proposed by Kistler and concerns raised by other users of the NTS. Included among the alternatives under consideration are the no action alternative and Area 18, which is in the northwest section of the NTS. The FAA will independently review the site selection process with respect to feasibility and environmental considerations and determine whether there are additional alternatives that are reasonable for detailed study in the EA.

If the environmental assessment process does not identify significant environmental impacts, AST will issue a Finding of No Significant Impact (FONSI). The FAA would make the FONSI available for public review for 30 days by announcing its availability in the **Federal Register** because of the unprecedented nature of the proposed action. Any questions and comments regarding the EA may be directed to FAA, Attn: Mr. Nikos Himaras, Commercial Space Transportation, FAA, DOT, 400 Seventh Street, Room No. 5402a, SW., Washington, DC 20590. He may also be reached at his Internet address of: nick.himaras@faa.dot.gov.

Issued in Washington, DC on June 24, 1997.

Patricia Grace Smith,

Acting Associate Administrator for Commercial Space Transportation.

[FR Doc. 97-17303 Filed 7-1-97; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-97-35]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 22, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591..

Comments may also be sent electronically to the following internet address: 9-NPRM-CMNTSfaa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Heather Thorson (202) 267-7470 or Angela Anderson (202) 267-9681 Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on June 26, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28938

Petitioner: Learjet, Inc.

Sections of the FAR Affected: 14 CFR 25.783(h)

Description of Relief Sought: To permit exemption for the Learjet Model 45, from the emergency exit type requirements of § 25.783(h) for the passenger entry door, to allow an oversized Type III exit in lieu of the required minimum Type II exit.

Dispositions of Petitions

Docket No.: 28891

Petitioner: Kachina Aviation

Sections of the FAR Affected: 14 CFR 133.19(a)(3) and 133.51

Description of Relief Sought/

Disposition: To permit Kachina to conduct external-load operations in the United States using its dry-leased, Canadian-registered Bell 212 helicopter.

Grant, June 9, 1997, Exemption No. 6638

Docket No.: 24427

Petitioner: United States Ultralight Association, Inc.

Sections of the FAR Affected: 14 CFR 103.1(a) and (e)(1) through (e)(4)

Description of Relief Sought/

Disposition: To permit individuals authorized by the USUA to give instruction in powered ultralight vehicles that have a maximum empty weight of not more than 496 pounds, have a maximum fuel capacity of not more than 10 U.S. gallons, are not capable of more than 75 knots of calibrated airspeed at full power in level flight, and have a power-staff stall speed that does not exceed 35 knots calibrated airspeed.

Grant, June 9, 1997, Exemption No. 4274G

Docket No.: 28775

Petitioner: American Flyers, Inc.

Sections of the FAR Affected: 14 CFR part 141, paragraph 3 (c) and (d) of appendix C

Description of Relief Sought/

Disposition: To permit American Flyers to provide an applicant for the instrument rating approach systems and one precision approach system, rather than exclusively using VOR (very high frequency omnidirectional range), ADF (automatic direction finder) and, ILS (instrument landing system) approaches, as required by the rule.

Grant, June 6, 1997, Exemption No. 6640

Docket No.: 28896

Petitioner: Era Helicopters

Sections of the FAR Affected: 14 CFR 61.77 (a), (b), (d), and (e)(1)

Description of Relief Sought/

Disposition: To permit China Southern Airlines Helicopter Company pilots to be eligible to hold special purpose pilot certificates to perform pilot duties on two U.S. registered Super Puma AS332L helicopters (Registration Nos. N170EH and N171EH) that do not meet the aircraft class, passenger seating configuration, and payload requirements of § 61.77.

Grant, June 9, 1997, Exemption No. 6639

Docket No.: 28905

Petitioner: Petroleum Helicopters, Inc.

Sections of the FAR Affected: 14 CFR 135.152(a)

Description of Relief Sought/

Disposition: To permit PHI to place three Bell 214ST helicopters (Registration Nos. N59805, N59806, and N6957Y, Serial nos. 28139, 28140, 28141, respectively) on its Operations Specifications and to operate those helicopters in nonscheduled operations under part 135 without a digital flight data recorder (DFDR) as required by § 135.152.

Grant, June 11, 1997, Exemption No. 6641

Docket No.: 28257

Petitioner: Flight Structures, Inc.

Sections of the FAR Affected: 14 CFR 25.785(d), 25.813(b), 25.857(e), and 25.1447 (c)(1) & (c)(3)(ii)

Description of Relief Sought/

Disposition: To permit supplemental type certification of Airbus Model A300-B4-100 series and -200 series passenger-to-freighter airplane conversions, with provisions for the carriage of persons other than flight crewmembers when the airplane is equipped with two floor-level exits with escape slides, within the occupied main deck area.

Grant, June 4, 1997, Exemption No. 6178A

Docket No.: 28768

Petitioner: Franklin Products, Inc.

Sections of the FAR Affected: 14 CFR 25.853(a)

Description of Relief Sought/

Disposition: To permit Franklin Products, Inc., to be exempt from vertical burn test requirements for water-based adhesives used in the manufacture of their seat cushions.

Water-based adhesives are the only viable alternatives to solvent-based adhesives which do comply with these requirements, but which are becoming no longer available.

Grant, June 4, 1997, Exemption No. 6634

Docket No.: 28710

Petitioner: United Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.434(c)(3)

Description of Relief Sought/

Disposition: To revise Condition No. 7 to state, "No observation may be conducted under this exemption prior to the flight leg during which the qualifying PIC will complete the minimum number of hours specified in § 121.434(c)(3)".

Grant, June 11, 1997, Exemption No. 6570A

Docket No.: 28787

Petitioner: Ameriflight, Inc.

Sections of the FAR Affected: 14 CFR 61.5 (a) and (c), and 91.203 (a) and (c)

Description of Relief Sought/

Disposition: To permit Ameriflight to temporarily operate its aircraft without those aircraft's airworthiness and registration certificates on board (and properly displayed in the case of airworthiness certificates) while obtaining replacements. This exemption also permits Ameriflight's pilots to temporarily operate Ameriflight's aircraft without those pilots having their pilot and medical certificates in their personal possession.

Grant, June 11, 1997, Exemption No. 6645

[FR Doc. 97-17302 Filed 7-1-97; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-97-36]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified

requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 22, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9-NPRM-CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Heather Thorson (202) 267-7470 or Angela Anderson (202) 267-9681 Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on June 26, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28824

Petitioner: Timco

Sections of the FAR Affected: 14 CFR 25.807(c)(1) and 25.857(e)

Description of Relief Sought: To permit the accommodation of up to four supernumeraries in the flight deck compartment of the TIMCO-modified 767-200F airplane.

Dispositions of Petitions

Docket No.: 28878

Petitioner: A Skydive Las Vegas, Inc.

Sections of the FAR Affected: 14 CFR 105.43(a)

Description of Relief Sought/

Disposition: To permit nonstudent

parachutists who are foreign nationals to make intentional parachute jumps for the purpose of training and recreational activities at ASLV's facilities without complying with the parachute equipment and packing requirements of the Federal Aviation Regulations.

Grant, June 4, 1997, Exemption No. 6643

Docket No.: 28885

Petitioner: Freefall Adventures, Inc.

Sections of the FAR Affected: 14 CFR 105.43(a)

Description of Relief Sought/

Disposition: To permit nonstudent parachutists who are foreign nationals to participate in FAI-sponsored events without complying with the parachute equipment and packing requirements of the Federal Aviation Regulations.

Grant, June 4, 1997, Exemption No. 6642

Docket No.: 28868

Petitioner: Skydive Space Center, Inc.

Sections of the FAR Affected: 14 CFR 105.43(a)

Description of Relief Sought/

Disposition: To permit nonstudent parachutists who are foreign nationals to make intentional parachute jumps for the purpose of training and recreational activities at SSC's facilities without complying with the parachute equipment and packing requirements of the Federal Aviation Regulations.

Grant, June 4, 1997, Exemption No. 6644

Docket No.: 26095.

Petitioner: Cochise Community College.

Sections of the FAR Affected: 14 CFR 141.65.

Description of Relief Sought/

Disposition: To permit the petitioner to recommend graduates of its approved flight instructor airplane single-engine course for flight instructor certificates with an airplane single-engine rating without those graduates taking the FAA practical test.

Grant, June 16, 1997, Exemption No. 6629A

Docket No.: 27429.

Petitioner: Community College of the Air Force.

Sections of the FAR Affected: 14 CFR 147.31(c)(2)(iii).

Description of Relief Sought/

Disposition: To permit the petitioner to allow U.S. Air Force aviation maintenance technicians who have completed military aviation

maintenance training courses to be evaluated using the same criteria that is used for the civilian sector.

Grant, June 13, 1997, Exemption No. 6094A

Docket No.: 27860.

Petitioner: Skydive Hawaii.

Sections of the FAR Affected: 14 CFR 105.43(a).

Description of Relief Sought/

Disposition: To permit nonstudent parachutists who are foreign nationals to participate in SAH-sponsored parachute jumping events without complying with the parachute packing and equipment requirements of the Federal Aviation Regulations.

Grant, June 13, 1997, Exemption No. 6125A

Docket No.: 23869.

Petitioner: Relative Workshop, Inc.

Sections of the FAR Affected: 14 CFR 105.43(a).

Description of Relief Sought/

Disposition: To permit Mr. Ramsey Kent, a 15-year-old minor, to participate in a one-time dual-harness, dual-pack parachute jump in accordance with the privileges of Exemption No. 4943, as amended.

Grant, June 19, 1997, Exemption No. 4943H

Docket No.: 21882.

Petitioner: China airlines, Ltd.

Sections of the FAR Affected: 14 CFR 61.77 (a) and (b), and 63.23 (a) and (b).

Description of Relief Sought/

Disposition: To permit CAL airmen who operate two U.S.-registered Boeing 747-SP aircraft (Registration Nos. N4508H and N4522V) and two U.S.-registered Airbus 300-600R aircraft (Registration Nos. N88881 and N88887) to be eligible for special purpose airman certificates. This amendment adds a third U.S.-registered Airbus 300-600R aircraft (Registration No. N8888B) to the list of aircraft that may be operated under Exemption No. 4849, as amended.

Grant, June 16, 1997, Exemption No. 4849F

Docket No.: 27491

Petitioner: Helicopter Association International and Association of Air Medical Services

Sections of the FAR Affected: 14 CFR 135.213(a)

Description of Relief Sought/

Disposition: To permit part 135 certificate holders that conduct helicopter emergency medical service (EMS) operations and are members of both the HAI and AAMS to conduct

EMS departures under instrument flight rules in weather that is at or above visual flight rules minimums. Such operations are permitted from airports or heliports at which a weather report is not available from the U.S. National Weather Service (NWS), a source approved by the NWS, or a source approved by the Administrator.

Grant, June 17, 1997, Exemption No. 6175A

Docket No.: 25628.

Petitioner: Moody Aviation.

Sections of the FAR Affected: 14 CFR part 141, appendix A, paragraph 3(c)(9).

Description of Relief Sought/

*Disposition: sd*To permit the petitioner to graduate a student from a private pilot certification course approved under part 141 without the student meeting the night flying requirements of appendix A.

Grant, June 16, 1997, Exemption No. 6646

Docket No.: 28917.

Petitioner: Ari Ben Aviator.

Sections of the FAR Affected: 14 CFR 61.187(b).

Description of Relief Sought/

Disposition: To permit ABA to use CFIs in its flight instructor certification course who have held a flight instructor certificate for less than 24 months preceding the date the instruction is given.

Grant, June 16, 1997, Exemption No. 6647

Docket No.: 28823.

Petitioner: Cape Smythe Air Service, Inc. and Mr. Willis M. Fisher.

Sections of the FAR Affected: 14 CFR 119.71(a).

Description of Relief Sought/

Disposition: To remove the requirement that Mr. Fisher obtain a dispatcher certificate and by adding the requirement that Mr. Fisher pass the ATP written test that is applicable to part 135 operations.

Grant, June 20, 1997, Exemption No. 6594A

[FR Doc. 97-17304 Filed 7-1-97; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Aircraft Certification Procedures Issues

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's Aviation Rulemaking Advisory Committee to discuss Aircraft Certification Procedures issues.

DATES: The meeting will be held on July 24, 1997, at 9:00 a.m. Arrange for oral presentations by July 10, 1997.

ADDRESSES: The meeting will be held at GAMA, 1400 K St. NW, Suite 801, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT:

Jeanne Trapani, Office of Rulemaking (ARM-208), 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267-7624.

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 to be held on July 24, 1997, at GAMA, 1400 K St. NW, Suite 801, Washington, DC 20005. The agenda for the meeting will include:

- Opening Remarks
- Working Group Status Reports
 - Production Certification
 - Parts
 - Delegation
 - ICPTF
- New Business

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by July 10, 1997, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Aircraft Certification Procedures or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

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.

Issued in Washington, DC, on June 26, 1997.

Brian A. Yanez,

Assistant Executive Director, ARAC on Aircraft Certification Procedure issues.

[FR Doc. 97-17301 Filed 7-1-97; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Special Committee 159]

RTCA, Inc.; Minimum Operational Performance Standards For Airborne Navigation Equipment Using Global Positioning System (GPS)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159 meeting to be held July 14-18, 1997, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, N.W., Washington, DC, 20036.

The agenda will be as follows:

Specific Working Group (WG) Sessions

July 14-15: WG-4A, Precision Landing Guidance (LAAS CAT I/II/III); July 16, 9:00-12:00 noon: WG-4A, Precision Landing Guidance (LAAS CAT I/II/III); 1:00-5:00 p.m.: (Joint) WG-4A, Precision Landing Guidance (LAAS CAT I/II/III); WG-2, WAAS Precision; July 17: WG-2, WAAS Precision; WG-2A, GPS/GLONASS; WG-4B, Airport Surface Surveillance (WG-4B will meet at ALPA, 1625 Massachusetts Avenue, 8th Floor, Washington, DC).

Plenary Session

July 18: (1) Chairman's Introductory Remarks; (2) Review/Approval of Minutes of Previous Meeting; (3) Review WG Progress and Identify Issues for Resolution: GPS/WAAS (WG-2); GPS/GLONASS (WG-2A); GPS/Precision Landing Guidance and Airport Surface Surveillance (WG-4); (4) Review of EUROCAE Activities; (5) Assignment/Review of Future Work; (6) Other Business; (7) Date and Location of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036; (202) 833-9339 (phone); (202) 833-9434 (fax); or <http://www.rtca.org> (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 23, 1997.

Janice L. Peters,
Designated Official.

[FR Doc. 97-17305 Filed 7-1-97; 8:45 am]

BILLING CODE 4810-13-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Situational Awareness Safety (SAS) System Requirements Team (SRT) Meeting**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The Federal Aviation Administration is working toward the rapid implementation of advanced avionics using Automatic Dependent Surveillance-Broadcast (ADS-B). The Agency currently has an ADS-B Avionics Management Plan in development. The purpose of the Plan is to focus Agency action on the process leading to operational approval of selected initial ADS-B applications. The FAA is planning to hold a meeting to reach public consensus on these initial ADS-B applications, identify the time frames necessary to develop and operationally approve these applications, and establish funding requirements. The purpose of this SRT is to achieve input on the plan from the user-community (both government and private sector) and to achieve better understanding, cooperation, and consensus on an ADS-B concept, user commitment to ADS-B, and a proposed implementation approach and schedule.

DATES: The meeting will be held July 22-24, 1997. The meeting will convene at 9 a.m. on July 22 and will conclude at 4 p.m. on July 24.

ADDRESSES: The meeting will be held at the Quality Hotel, 1200 N. Courthouse Road, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Mr. James I. McDaniel, Federal Aviation Administration, ATTN: AND-720, 800 Independence Ave., SW, Washington, DC 20591; telephone (202) 260-9899 or Mr. Mark Cato, Crown Communications, Inc., 1133 21st Street, NW, Suite 300, Washington, DC 20036; telephone (202) 785-2600, extension 3020.

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 to reach industry and government consensus on a process that will result in near-term implementation of selected ADS-B applications for oceanic, en route, and terminal airspace, as well as airport surface operations. This SAS-SRT is the third in a series of public meetings to facilitate the introduction of advanced avionics promoting situational awareness and enhanced aviation safety. The scope of this third meeting is focuses on ADS-B

and the implementation of initial ADS-B operational applications.

The Quality Hotel is located 2 blocks from the Courthouse Metro Station on the Orange line. A block of 50 rooms has been reserved. For reservations, contact the hotel at (703) 524-4000 and ask for the "FAA ADS-B Meeting" group rate of \$124 (government rate inclusive of all state and local taxes). Reservations must be made by July 7, 1997.

Attendance is open to the interested public, but may be limited to the space available. An agenda and background material is available on the Internet at <http://sas-srt.crown.com> for review before the meeting. Request for hard copies should be submitted to Crown Communications. In addition, sign and oral interpretation or an assistive listening device must be requested 10 calendar days before the meeting. Arrangements may be made by contacting Mr. Cato (the meeting coordinator) listed under the heading **FOR FURTHER INFORMATION CONTACT**. For our planning purposes, please let Mr. Cato know if you plan to attend.

Issued in Washington, DC, on June 24, 1997.

James I. McDaniel,

Program Manager, Situational Awareness for Safety, AND-720.

[FR Doc. 97-17391 Filed 7-1-97; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Notice of Intent to Rule on Application to Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Valdosta Regional Airport, Valdosta, Georgia**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Valdosta Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 1, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office,

Campus Building, 1701 Columbia Avenue, Suite 2-260, College Park, GA 30337-2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: Mr. Richard R. Clark, Executive Director, Valdosta-Lowndes County Airport Authority, 2626 Madison Highway, Valdosta, GA 31601.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Valdosta-Lowndes County Airport Authority under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Southern Region, Atlanta Airports District Office, Ms. Tracie L. Dominy, Airports Area Representative, 1701 Columbia Avenue, Suite 2-260, College Park, GA 30337-2747, (404) 305-7148.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Valdosta Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 17, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by Valdosta-Lowndes County Airport Authority was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 20, 1997.

The following is a brief overview of the application.

Level of the proposed PFC: \$3.00.

Proposed charge effective date: October 1, 1997.

Proposed charge expiration date: September 30, 1999.

Total estimated PFC revenue: \$148,500.

Application number: 97-03-C-00-VLD.

Brief description of proposed project(s): Fund local share of—

1. Terminal Building
2. Replace taxiway lights
3. Purchase of Airport Rescue and Fire Fighting (ARFF) vehicle Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any

person may, upon request, inspect the application, notice and other documents germane to the application in person at the Valdosta-Lowndes County Airport Authority.

Issued in College Park, Georgia on June 17, 1997.

Dell T. Jernigan,

Manager, Atlanta Airports Division, Southern Region.

[FR Doc. 97-17300 Filed 7-1-97; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA-97-2625]

Qualification of Drivers; Waiver Application; Vision

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of petition and intent to grant application for waiver; request for comments.

SUMMARY: This notice announces the FHWA's preliminary determination to grant the application of David R. Rauenhorst for a waiver of the vision requirements contained in the Federal Motor Carrier Safety Regulations (FMCSR). Granting the waiver will enable Mr. Rauenhorst to qualify as a driver of commercial motor vehicles in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before August 1, 1997.

ADDRESSES: Submit written, signed comments to the docket number that appears in the heading of this document to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. All comments received will be available for examination at the above address between 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywockarte, Office of Motor Carrier Research and Standards, (202) 366-1790, or Ms. Judy Rutledge, Office of Chief Counsel, (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: David R. Rauenhorst has applied for a waiver of the vision requirement in 49 CFR 391.41(b)(10) which applies to drivers of commercial motor vehicles in interstate commerce. Under 49 U.S.C. 31136(e), the FHWA may waive application of the vision standard to Mr. Rauenhorst if the agency determines that the waiver is consistent with the public interest and the safe operation of commercial motor vehicles. Accordingly, the FHWA has evaluated Mr. Rauenhorst's application on its merits, as required by the decision in *Rauenhorst v. United States Department of Transportation, Federal Highway Administration*, 95 F.3d 715 (8th Cir. 1996), and made a preliminary determination that granting the waiver is consistent with the public interest and the safe operation of commercial motor vehicles.

Mr. Rauenhorst has been self-employed as a commercial truck driver since 1974. In 1976, a non-driving accident caused him to sustain a retinal detachment in his right eye. This eye condition prevents Mr. Rauenhorst from meeting the vision requirement of 49 CFR 391.41(b)(10) and, thus, renders him unqualified as a driver of commercial motor vehicles in interstate commerce unless application of the vision standard is waived.

Medical reports for 1995, 1996, and 1997, indicate that Mr. Rauenhorst's eye condition is non-degenerative and that the vision in the right eye is stable and will not worsen. He has 20/20 corrected vision in his left eye, and, in his doctor's opinion, can safely operate a motor vehicle. Because the retinal detachment occurred in 1976, Mr. Rauenhorst has had 21 years to adapt his driving skills to accommodate his vision deficiency. His driving experience and record demonstrate that he has successfully made this adaptation.

Mr. Rauenhorst has driven tractor-trailer combinations more than 2 million miles since 1974. In the last 10 years, he has driven approximately 1 million miles without an accident. Furthermore, his driving record for the last 3 years reflects no traffic violations and no accidents. He obtained his first commercial operator's license in 1973 and currently holds a commercial driver's license (CDL) that was issued by the State of Minnesota in 1995 and is valid until 1999. During this lengthy driving career, his license to drive has never been suspended or revoked.

Driving with his eye condition for 21 years, Mr. Rauenhorst has established a safe driving record that is persuasive evidence that he has adapted his driving skills to accommodate his vision

deficiency. Accordingly, the FHWA believes that waiving application of 49 CFR 391.41(b)(10) is consistent with the public interest and the safe operation of commercial motor vehicles, as long as Mr. Rauenhorst's vision does not deteriorate. As a condition of the waiver, therefore, the FHWA proposes to impose requirements that are consistent with the grandfathering provisions applied to drivers who participated in the vision waiver study program. Those requirements are found at 49 CFR 391.64(b) and include the following conditions: (1) That Mr. Rauenhorst be physically examined every year, including an examination by an ophthalmologist or optometrist, attesting to the fact that (a) he is otherwise physically qualified under 49 CFR 391.41 and (b) his vision continues to measure at least 20/40 (Snellen) in the better eye; (2) that he provide a copy of the ophthalmologist or optometrist report to the medical examiner at the time of the annual medical examination; and (3) that he keep a copy of the annual medical certification in his driver qualification file as long as he is self-employed or provide a copy to his employer for retention in the driver's qualification file, and retain a copy of the certification on his person while driving for presentation to a duly authorized Federal, State, or local enforcement official.

Authority: 49 U.S.C. 31136; 23 U.S.C. 315; 49 CFR 1.48.

Issued on: June 24, 1997

Jane F. Garvey,

Acting Administrator for the Federal Highway Administration.

[FR Doc. 97-17233 Filed 7-1-97; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Criteria for Granting Waivers of the Requirement for Exclusive U.S.-Flag Vessel Carriage, of Certain Cargo Covered by Public Resolution 17 (PR 17), 73rd Congress

AGENCY: Maritime Administration, DOT.

ACTION: Policy revision.

SUMMARY: This policy statement revises an existing Maritime Administration policy in effect since 1959 regarding criteria considered in granting waivers of the requirement for exclusive U.S.-flag carriage of certain cargo covered by PR 17. Revision of this policy, following public notice and comment, is deemed necessary to suit the changing market environment in the maritime industry.

EFFECTIVE DATE: June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Harrelson, Director, Office of Cargo Preference, Phone: (202) 366-5515, Lester Levay, Chief, Division of Civilian Agencies, Phone: (202) 366-5512.

SUPPLEMENTARY INFORMATION:

Promulgation of this statement of policy follows publication of advance notices of proposed rulemaking on October 28, 1996 (61 FR 55614) and December 24, 1996 (61 FR 67764), the receipt of comments in response, as well as, a public forum held on May 29, 1997, which afforded interested parties an opportunity to address oral and written comments to the Maritime Administration and Export-Import Bank officials. Based on the positions enunciated by ocean carriers and shippers, reflecting their divergent interests, MARAD concluded that the circumstances which lead to grant of waivers to allow use of foreign-flag vessels to carry PR 17 cargo when U.S.-flag vessels are not available are such that discrete rules of general applicability are not necessary or feasible. Accordingly, the grant of waivers will continue on the basis of the long held policy of case-by-case determinations. Approval to amend the current information collection requirement (OMB No. 2133-0013) regarding Public Resolution 17 is pending.

Statement of Policy on Public Resolution 17—73rd Congress

The Maritime Administrator has authorized the following statement describing the policies and procedures in administration of Public Resolution 17, 73rd Congress, 48 Stat. 500, 46 App. U.S.C. 1241-1, as applies to credits of the Export-Import Bank of the United States. A statement of policies and procedures with respect to other agencies of the Government will be issued as required.

1. Scope of Applicability

Public Resolution No. 17 provides that where loans are made by an instrumentality of the Government to foster the exporting of agricultural or other products, provision shall be made that such products be carried exclusively in vessels of the United States unless the Maritime Administration shall certify to the lending agency that such vessels are not available as to numbers, tonnage capacity, sailing schedule or at reasonable rates. The Resolution is applicable to credits of the Export-Import Bank for the purpose of

financing the acquisition and shipment of United States products or services. The Bank includes in any such credit agreement a requirement that shipments be made in United States flag vessels, except to the extent a waiver of that requirement may be granted by the Maritime Administration, as outlined hereinafter. The Bank refers to the Maritime Administration any requests for waivers received by it and follows the decisions of the Maritime Administration with respect thereto.

2. Types of Waivers

The general process for all waiver requests are is set forth in Appendix A, attached hereto. Guidelines for the information to be included in the waiver request set forth in Appendix B, attached hereto.

(A) Non-Availability Waivers

When it appears that U.S. vessels will not be available from the port or area of shipment to the foreign destination within a reasonable time or at reasonable rates, foreign borrowers, public or private, or their representatives in the United States may apply directly to the Maritime Administration, Office of Cargo Preference, for waiver of the U.S. flag requirement. Requests for waivers shall be in writing. The Maritime Administration will make such investigation as appears warranted to determine whether U.S. flag vessels are available and will reply in writing with approval or denial of the waiver or may request additional information. Copies of approved waivers or denials will be sent to the Export-Import Bank.

Such waivers shall apply to the specific cargo movements occurring during the period of U.S. flag non-availability as approved and the name of the ship, date of sailing, load and discharge ports, ocean freight and weight of cargo shall be reported to the Maritime Administration with a rated copy of the bill of lading.

Those foreign borrowers, public or private, and/or their United States representatives and exporters who know their credit will involve more than one shipment of cargo are strongly encouraged to meet with the U.S. flag carriers and then meet separately with the Maritime Administration, Office of Cargo Preference staff to provide full and complete information regarding the project, specifically identifying those cargoes on which a waiver might be sought. The information to be presented to the carriers and to the Maritime Administration is listed in Appendix C attached hereto.

(B) General Waivers

In certain circumstances, notwithstanding the availability of U.S. flag vessels, recipient nation vessels may be authorized to share in the ocean carriage of Export-Import Bank financed movements, but not in excess of fifty percent of the total movement under the credit. Such participation, representing a reduction of the U.S. flag share, may be granted when the Maritime Administration is satisfied that parity of treatment is extended to U.S. vessels in the trade of the foreign nation. When foreign borrowers, public or private, or the primary U.S. exporter desire such general waivers in order to make partial use of their own national flag vessels, application must be made to the Maritime Administration, Office of Cargo Preference, for a General Waiver applicable to the particular credit. When application is made by private interests, sponsorship by an official of the foreign government may be requested in order to obtain satisfactory understanding that the recipient nation undertakes to maintain conditions of the fair and equitable treatment for U.S. flag shipping.

(1) Such waivers, if granted, shall apply only to vessels of recipient nation registry to the extent of their capacity to carry the cargo, based on normal flow of the traffic from interior through ports of shipment, but not in excess of fifty percent of the total movement under the credit.

(2) General Waivers will normally apply throughout the life of the credit, but may be reconsidered at any time by the Maritime Administration or the Export-Import Bank in the light of altered circumstances.

(3) The record of flag distribution between U.S. and recipient national flag vessels shall be based on (a) both manifest weight and ocean freight revenue; and/or (b) such other units as may be found suitable in exceptional circumstances.

(4) Applicants or their representatives in the United States shall provide reports of movements to the Maritime Administration, Office of Cargo Preference, at monthly or other intervals as arranged, in the general form of Appendix D, attached hereto. The data to be included on these reports may be varied by the Maritime Administration to meet specific circumstances of the movements from time to time.

(5) The granting of a General Waiver will not take place until the Maritime Administration, Office of Cargo Preference, has received written confirmation of the applicant's agreement to the foregoing terms and

conditions and has been advised of the name and address of the designee located in the United States who will be responsible for controlling the routing of the cargo and providing the required monthly reports.

(C) Compensatory Waivers

When a foreign borrower, public or private, or their representatives in the United States, prior to the Export-Import Bank credit agreement or in honest error, moves cargo on a foreign flag vessel and subsequently determines a waiver is needed to meet Export-Import Bank financing requirements, said exporter may apply directly to the Maritime Administration, Office of Cargo Preference, for a Compensatory Waiver. The Maritime Administration, after investigation, may grant a Compensatory Waiver whereby the exporter contracts in writing with the Maritime Administration to move an equivalent amount of ocean freight revenue of non-government impelled cargo on U.S. flag vessels within a specified time period.

(D) Extended Waivers

If a foreign borrower, public or private, or their representatives in the United States, believes that an Extended Waiver is necessary to best serve the exports of United States products or services related to the Export-Import Bank credit, said exporter may apply to the Maritime Administration, Office of Cargo Preference, for up to a six month waiver of the U.S. flag requirement. A condition precedent to the Maritime Administration granting an Extended Waiver is that the exporter shall meet with the U.S. flag carriers and then shall meet separately with the Maritime Administration, Office of Cargo Preference staff to provide full and complete information regarding the project, specifically identifying those cargoes on which the waiver is sought. The information to be presented to the carriers and to the Maritime Administration is listed in Appendix C, attached hereto.

After investigation, the Maritime Administration may grant a waiver for a period of time not to exceed six months to cover specific identified cargoes. Depending on investigations of reasons cited by the exporter, and after consultation with the U.S. flag carriers, the Maritime Administration may grant up to a three month extension of the waiver on such specific identified cargoes.

3. Considerations Influencing Approval of Applications for Waivers

(A) In the disposition of applications for General Waivers under Paragraph 2(B) the Maritime Administration will take into consideration:

(1) The treatment accorded U.S. flag vessels in the trade with the recipient nation, particularly whether U.S. flag vessels have parity of opportunity vis-a-vis national flag or other foreign flag vessels to solicit and participate in movements controlled in the foreign nation; parity in the application of consular invoice fees, port charges and facilities; also parity of exchange treatment including the privilege of converting freight collections to dollars as needed. Information will be sought from U.S. ship owners and other sources as to their experiences in the particular trade;

(2) The national policy of the United States, including the Merchant Marine Act of 1936, as well as the purpose of the Export-Import Bank in authorizing the credit.

(B) In the disposition of applications for non-availability waivers under Paragraph 2(A) or 2(D), the Maritime Administration will take into consideration:

(1) If the applicant followed the process set forth in Appendix A and provided the waiver information in Appendix B and met with the U.S. flag carriers and with the Maritime Administration at the beginning of the project to provide the information listed in Appendix C;

(2) The national policy of the United States, including the Merchant Marine Act of 1936, as well as the purpose of the Export-Import Bank in authorizing the credit.

Attachments

Appendix A: Waiver Request Procedures

Appendix B: Waiver Request Required

Information

Appendix C: Information and

Communication Guide

Appendix D: Movement Reports Guide

Appendix A—(OMB No. 2133-0013 Applies to This Collection of Information)

Waiver Request Procedures

A. Non-Availability Waivers

STEP:

1. The foreign borrowers, public or private, or their United States representative receives or expects to receive Export-Import Bank credit approval. (Note: Shipments could commence prior to the credit approval. See the section on Compensatory Waivers.) In the early stages of the

project, either prior to or when the credit is approved, the shipper should meet with the U.S.-flag carriers and the Maritime Administration and discuss the project cargoes detailing the information suggested in Appendix C.

2. The shipper must present its Request for Quotation (RFQ) for ocean service to the carriers at least forty-five (45) calendar days in advance of the intended shipping date. For efficiency, the RFQ also should be sent to the Maritime Administration. The RFQ should be presented at the same time and with the same information to all carriers, both U.S. and foreign. The RFQ must be given to all U.S.-flag carriers who may have service or could initiate service and should contain the most detailed information available regarding the commodities, sizes and weights. The shipper must give carriers at least fourteen (14) calendar days in which to respond.

3. The U.S.-flag carriers must respond to the RFQ within fourteen (14) calendar days either declining the cargo or providing an offer addressing both the rate quotations and the logistical needs expressed in the RFQ.

4. If the shipper cannot find a U.S.-flag carrier to handle the cargo, the shipper must present a waiver request to the Maritime Administration at least thirty (30) calendar days in advance of the intended shipping date. The request must contain all the required information as shown in Appendix B.

5. The Maritime Administration will review the application, verify the waiver documentation provided by the shipper, make such investigations or request further information as needed, and canvass the market for U.S.-flag carriers to handle the cargo.

6. The Maritime Administration will reply in writing either approving or denying the waiver.

B. General Waivers

1. As set forth in Policy Statement paragraph 2(B), if a foreign borrower or primary U.S. exporter desires to make partial use of registered vessels of the recipient nation for a specific Export-Import Bank credit, a written request must be made to the Maritime Administration, Office of Cargo Preference.

2. The Maritime Administration will make such investigations as needed, including consultations with U.S.-flag carriers, to determine that parity of treatment is extended to U.S.-flag vessels in the trade of that foreign nation.

3. If the Maritime Administration does not find discrimination, it will

advise the applicant that a General Waiver may be granted at such time as the Maritime Administration receives written confirmation of the applicant's agreement to the terms and conditions set forth in Policy Statement paragraph 2(B). When such written confirmation is received, the Maritime Administration will grant the General Waiver in writing with a copy to the Export-Import Bank.

C. Compensatory Waivers

1. If a Compensatory Waiver is needed (Policy Statement paragraph 2(C)), the shipper should make a written application to the Maritime Administration, stating the reasons, identifying the Export-Import Bank credit number and country, and attaching freighted copies of the ocean bill of lading covering the erroneously shipped cargoes.

2. After investigation, if the Maritime Administration decides to grant a Compensatory Waiver, the shipper will be notified of the requirements and will have to execute a written agreement to meet those requirements.

3. Upon receipt of the written contract from the shipper, the Maritime Administration will issue the waiver.

D. Extended Waivers

1. If an Extended Waiver (Policy Statement paragraph 2(D)) is desired, this should be made known during both the meeting with the U.S. carriers and the meeting with the Maritime Administration and the specific cargoes to be moved during said waiver time period should be identified. Subsequently, the shipper will canvass the market for U.S.-flag carriers to handle the identified cargoes. If none can be found the shipper will make written application to the Maritime Administration detailing the information as required in Appendix B and stating the requested beginning and ending dates of the extended waiver period. The application must be received by the Maritime Administration at least forty-five (45) calendar days prior to the intended commencement of the requested Extended Waiver period.

2. The Maritime Administration will review the application in light of the information presented at the earlier meeting and will also consult with the U.S. carriers. If necessary, additional information may be requested.

3. If no U.S.-flag carrier can be found, an Extended Waiver for the agreed time period, conditions and specific identified cargoes will be granted.

4. Should there be a delay in the availability for shipment of the identified cargo under an Extended

Waiver, the Maritime Administration may consider an extension of time sufficient to ship said cargoes but not to exceed three months. In this event, the shipper should notify the Maritime Administration as soon as possible but at least 30 days prior to the end of the Extended Waiver period, documenting the reasons for the delay and requesting the extension. After investigation and consultation with the U.S. carriers, the Maritime Administration may grant an extension.

5. To meet the needs of the Export-Import Bank, once an Extended Waiver is granted by the Maritime Administration, the shipper will have to provide the Maritime Administration the Export-Import Bank credit number and country, vessel name, registry, sailing date, load port, discharge port, weight in pounds, FAS value of cargo, ocean freight, list of cargoes shipped and a freighted copy of the bill of lading for each voyage made under the terms of the Extended Waiver. This information must be provided within thirty (30) days of the date of loading. The Maritime Administration will then issue a standard waiver letter for each voyage for presentation to the Export-Import Bank. This resulting standard waiver letter will only cover those cargoes specifically identified and previously agreed under the Extended Waiver. If a shipper wishes to place any additional cargoes on the same voyage, they must utilize the standard waiver procedure, detailed in Appendix A paragraph A, with appropriate notice to the U.S. carriers.

Appendix B—(OMB No. 2133-0013 Applies to This Collection of Information)

PR-17 Statutory Waiver Request—Format

The below information is required to process a statutory waiver request. This information should be mailed or faxed to Office of Cargo Preference, Room 8118, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590. Fax number is 202-366-5522.

RE: Eximbank Credit No. (Enter the number)-Country (Enter Country name).

Applicant: (Name of company seeking the waiver. Should be the cargo shipper or beneficial owner. If a freight forwarder or other party makes the application, it must clearly state on whose behalf they are seeking the waiver and that they legally represent said party.).

Vessel: (Name of vessel you propose to use. Enter "To Be Named" if unknown. Note that actual vessel must

be named prior to a final waiver being issued.).

Registry: (Nation of registry of vessel).
Commodity: (Short one line description similar to Acquisition List line items. Attach detailed description as part of packing list or similar document.).

Weight: (Total weight in pounds. Attach details of individual shipping components with dimensions and weights as part of packing list or similar document.).

Value of Shipment: (FAS value in US dollars).

Ocean Freight: (Actual or estimated ocean freight charges from carrier you propose to use.).

Loading Port: (Desired port to load cargo.).

Loading Date: (Date when cargo will be ready to load.).

Discharge Port: (Desired port of destination for ocean carriers.).

Written reason(s) for the waiver request with documentation supporting each reason attached.

The following language must be included in any waiver request above the signatory block.

"This application is made for the purpose of inducing the United States of America to grant a waiver of Public Resolution 17 and the rules and regulations prescribed to carry out the provisions of PR-17. I have carefully examined the application and all documents submitted in connection therewith and, to the best of my knowledge, information and belief, the statements and representatives contained in said application and related documents are full, complete, accurate and true.

Signature:

Name (typed):

Title:

Date:"

The Following Documents Must Be Attached

1. Copy of the "Request for Quotations (RFQ)" package which the shipper sent to the carriers. Note it is preferable that the shipper send a copy of the RFQ to Maritime Administration at the same time it is sent to the carriers, in which case it is not necessary to attach another copy. The RFQ should contain the most detailed information available regarding the commodities, sizes and weights. A packing list is preferable.

2. A list of all carriers, with names of personnel, to whom the RFQ was sent.

3. Attach copies of any responses received from any US-flag carriers.

4. Documentation supporting each reason justifying the need for a waiver.

For example, a contract problem requires a copy of the applicable contract clauses; a letter of credit problem requires a copy of the L/C; US-flag service not available requires copies of written declinations by the US carriers; etc.

Note: The U.S. Criminal Code makes it a criminal offense for any person knowingly to make a false statement or representation to, or to conceal a material fact from, any department or agency of the United States as to any matter within its jurisdiction (18 U.S.C. 1001), or to file a false, fictitious or fraudulent claim against the United States (18 U.S.C. 287). Civil fraud may incur fines of \$10,000 plus 3 times damages and expenses of government recovery. Criminal fraud provides up to 5 years imprisonment. In addition, corporations may be debarred from further Government contracts.

Appendix C.—(OMB No. 2133-0013 Applies to This Collection of Information)

Information and Communication

At the beginning of a project shippers should:

- meet with the U.S.-flag ocean carriers
- meet with the Maritime Administration
- Purpose:
 - layout project in as much detail as possible
 - discuss contract requirements
 - discuss any unique or expected problem requirements
 - discuss purchase process, sourcing, timing
 - provide best estimates, details, pictures of types of cargo
 - discuss what cargoes should move together and why
 - discuss anticipated shipment dates tied to project schedules
 - discuss items which doubt U.S. carriers can handle & alternatives
 - obtain carrier capabilities & alternatives
 - discuss proposed allocations between U.S. & foreign carriers
 - discuss impacts on foreign content requirements
 - establish a working relationship with carriers

In addition, for the Maritime Administration meeting:

- discuss potential compensatory waivers if applicable
- discuss reporting requirements
- provide written commitment to support the U.S. merchant marine on all cargoes when possible
- establish a working relationship with Maritime Administration

As the project progresses, keep the carriers and Maritime Administration informed of progress related to initial projections and unforeseen problems as they arise.

The more each party understands the others objectives and capabilities, the better the communications and the smoother and faster the process if a waiver is ever needed.

BILLING CODE: 4910-81-P

APPENDIX D

(OMB No. 2133-0013 applies to this collection of information.)

 U.S. Department of Transportation Maritime Administration	MONTHLY REPORT OF OCEAN SHIPMENTS MOVING UNDER EXPORT-IMPORT BANK FINANCING				OMB No. 2133-0013 Public reporting burden of this collection of information is estimated to average 30 minutes per response. Send comments regarding this burden estimate or any other aspect of this information collection to the Maritime Administration, Office of Management Services, 400 Seventh Street, S.W., Room 7225, Washington, DC 20590, and to the Office of Management and Budget, Paperwork Reduction Project (2133-0013), Washington, DC 20503.		SHIPMENT DURING MONTH OF: SHIPMENTS TO: <i>(Name of Country)</i> EXPORT-IMPORT CREDIT NO. DATE OF THIS REPORT: FROM: SUBMITTED:	
	Load Port	Discharge Port	Name of Vessel	Registry	Brief Description of Cargo	Value of Cargo	Weights Tons (2240 lbs.)	Ocean Freight Charges
STATUS OF SHIPMENTS TO DATE								
	UNITED STATES FLAG Value of Cargo Weight Tons (2240 lbs.) Ocean Freight Charges		RECIPIENT FLAG Value of Cargo Weight Tons (2240 lbs.) Ocean Freight Charges		THIRD FLAG Value of Cargo Weight Tons (2240 lbs.) Ocean Freight Charges			
Prior Cumulative Totals								
This Report								
Grand Total								

Dated: June 25, 1997.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary,

[FR Doc. 97-17062 Filed 7-1-97; 8:45 am]

BILLING CODE 4910-81-C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Planning Grants To Support the Demonstration and Evaluation of Pre-Driver Licensure Drug Testing Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Announcement of the availability of funds and request for grant applications to support planning for the demonstration and evaluation of pre-driver licensure drug testing programs.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces the availability of Federal funds to support the planning effort necessary to demonstrate and evaluate the effectiveness of pre-driver licensure drug testing to deter drug use, reduce drug impaired driving, and promote public safety. Depending on availability of funds, up to \$2 million will be made available for these planning grants.

The planning grants solicited by this announcement will allow interested states to carefully investigate the options and resolve the many complex practical and legal issues associated with developing a pre-driver licensure drug testing program and to develop a detailed proposal for federal funding to support implementation of the demonstration program.

NHTSA anticipates funding, under a separate announcement, two (2) to four (4) demonstration and evaluation projects for a period of two years for selected states to devise and test essential core elements of pre-driver licensure drug testing. The demonstration states would have considerable flexibility in implementing the program, which would be fully evaluated through a single, independent evaluation. Because of the many complex practical and legal issues associated with designing and implementing a program of this type, NHTSA intends to follow a two stage process to encourage states to participate in the demonstration program. The first step involves the issuance of planning grants (covered under this notice), followed by competitively awarded demonstration

grants (covered under a separate announcement to be issued at a later date).

DATES: Applications must be received at the office designated below on or before August 12, 1997.

ADDRESSES: Applications must be submitted to the National Highway Traffic Administration, Office of Contracts and Procurement (NAD-30), ATTN: Joe Comella, 400 7th Street, SW., Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Grant Program No. DTNH22-97-G-05277. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Joe Comella, Office of Contracts and Procurement, at (202-366-9568). Programmatic questions relating to this grant program should be directed to Dr. Richard P. Compton, Science Advisor, Traffic Safety Programs, NHTSA, Room 6240 (NTS-30), 400 7th Street, SW., Washington, DC 20590 (202-366-2699).

SUPPLEMENTARY INFORMATION:

President Clinton's Directive

President Clinton, in his weekly radio address to the nation on October 19, 1996, urged stronger measures to reduce the incidence of drug use by teens and reduce driving under the influence of drugs in general. That same day, the President asked the Director of National Drug Control Policy and the Secretary of Transportation to present recommendations to him within 90 days that would meet the two goals. The President's directive specifically requested that the recommendations consider drug testing for minors applying for driver licenses.

A task force, led by the Department of Transportation (DOT) and the Office of National Drug Control Policy (ONDCP), and including representatives from the Departments of Education (DOE), Health and Human Services (DHHS), and Justice (DOJ), studied the issues. The task force reviewed relevant background information, consulted with interested agencies, organizations, and constituencies (including youth in 27 states, the District of Columbia, the Cherokee Nation and the Virgin Islands), and drafted recommendations for consideration.

Those recommendations called for a Federally funded demonstration program, conducted by 2-4 states over two years, to devise and test essential core elements of pre-driver licensure drug testing. The demonstration states

would have considerable flexibility in implementing the program, which would be fully evaluated through a single, independent evaluation.

The task force felt that pre-licensure testing would send an important message to America's youth that drugs and driving don't mix. It should be instituted as part of a systematic strategy to deter drug use and drugged driving. Pre-licensure testing, by itself, should reduce drug use and drugged driving by some youth. If combined with some form of unscheduled testing, after crashes or driving violations, its effects should be even greater and will promote public safety. Drug testing would also identify youth who are experimenting with or using drugs so that they can be referred to drug assessment and appropriate interventions as a condition of reapplying for a driver's license.

Many choices must be made in implementing a pre-driver licensure drug testing program: Who should be tested, when and by whom should they be tested, for what drugs, and under what circumstances. Some options raise substantial legal issues; some are quite expensive. Other options raise procedural or logistical issues or may have unexpected effects. Because of these complexities, it was felt that a 2-4 state demonstration program will encourage different approaches to be tested and evaluated, so that their strengths and weaknesses can be determined.

NHTSA aims to determine the effectiveness of pre-licensure drug testing on reducing drug use, drug impaired driving and promoting public safety, determine the impacts of promising program models, and address a range of implementation issues of importance to other states, the Federal Government, and the general driving public. Evaluation findings will be shared with State administrators to help them in their efforts to improve safety on their roads and reduce drug use in their states.

Planning grants made available under this announcement will be for a period not to exceed six (6) months. In FY 1998, the Federal Government will solicit proposals for federal support to implement pre-licensure drug testing programs. A separate application will be necessary to be considered for an implementation grant. States choosing not to participate in these planning grants may still apply for an implementation grant.

This program announcement consists of four parts. Part I provides background information on drug use by youth, drugs and driving, state laws regarding driving under the influence of drugs, drug

testing experience, methods of drug testing, drug testing procedures, drug testing costs, and intervention and treatment for drugs. Part II describes the activities supported by this announcement. Part III describes the application requirements and instructions for the development and submission of applications. Part IV describes the application review process.

Part I—Background Information

Drug Use by American Youth Is Increasing

In the last few years America has made significant progress against drug use and related crime. For example, the number of Americans who use cocaine has been reduced by 30% since 1992. However, the evidence is clear that drug use among American youth is increasing. Drug use by youth peaked in the late 1970s and then declined steadily through the next decade. It began to increase again in the early 1990s. These trends are documented in the 1996 *Monitoring the Future Study*, a self-reported survey of 49,000 8th, 10th, and 12th grade students which reports drug, alcohol, and tobacco use, along with attitudes toward drug use. This study has been conducted annually for 22 years by the University of Michigan. The proportion of 8th graders using illicit drugs (including LSD, other hallucinogens, amphetamines, stimulants and inhalants) in the past year more than doubled since 1991 (11% to 24%), and 12th grader use increased by more than one third (29% to 40%).

Marijuana use showed the sharpest increase (for example, the proportion of 8th graders using marijuana in the past year tripled since 1991, rising from 6% in 1991 to 18% in 1996). In addition, the perceived risk of using drugs declined throughout the 1990s (perceived "great risk" of occasional marijuana use among 12th graders dropped from 41% in 1991 to 26% in 1996).

These findings are confirmed by several other national surveys. The *National Household Survey of Drug Abuse* (1995), sponsored by the Department of Health and Human Services (DHHS), reported that marijuana use by 12–17 year olds increased from 1991 to 1994. The *Youth Risk Behavior Survey* (1995), sponsored by the Centers for Disease Control (CDC), found that 26% of 12th graders reported using marijuana within the past month. The *9th Annual Survey of Students* (1995–96), conducted by the National Parents' Resource Institute for

Drug Education (PRIDE), found that the proportion of 9–12th graders who said they had used marijuana during the past year more than doubled, rising from 17% in 1991–92 to 34% in 1995–96.

The evidence is clear and consistent: While still well below the peak levels attained in the late 1970s, youth drug use has risen steadily in the 1990s.

Marijuana Is Harmful

Research shows that marijuana is harmful to the brain, heart, lungs, and immune system. It limits learning, memory, perception, judgment, and complex motor skills like those needed to drive a vehicle. Marijuana smoke typically contains over 400 compounds, some of which are carcinogenic. In addition, new evidence suggests that marijuana may be addictive and that, among heavy users, its harmful short-term effects on alertness and attention span last more than 24 hours.

Driving While Under the Influence of Drugs Is Not Uncommon

The nature and extent to which drugs other than alcohol are a serious highway safety problem among the general driving population cannot be specified with certainty. While good data exist on alcohol-involved crashes, data are limited regarding what drugs, at what levels, impair driving and cause crashes.

The available information from studies of drivers who have been involved in crashes indicates that many have used drugs. NHTSA estimates that drugs are used by approximately 10% to 22% of drivers involved in crashes, often in combination with alcohol. In a NHTSA study of 1,882 fatally injured drivers from seven states in 1990–91, alcohol was found in 51.5% and other drugs were found in 17.8% of the drivers. Of the 17.8% of the drivers found to have used other drugs, alcohol was present in two-thirds (11.4%) and drugs alone in one-third (6.4%). Marijuana was found in 6.7% of the fatally injured drivers, cocaine in 5.3%, benzodiazepines in 2.9%, and amphetamines in 1.9%.

Studies of drivers injured in crashes or cited for traffic violations also show that many have used drugs. In an ongoing NHTSA study of non-fatally injured drivers in Rochester, New York, 12% of all drivers tested positive for drugs other than alcohol (43 out of 360 cases), and 23.5% of drivers under 21 years old tested positive for drugs other than alcohol (4 out of 17 cases). Studies of crash involved drivers taken for medical treatment to a hospital emergency room have shown positive drug rates ranging from below 10% to as high as 30% to 40%. Studies of drug

incidence among drivers arrested for motor vehicle offenses have found drugs in 15% to 50% of drivers. The higher rates typically are more prevalent among drivers who have been arrested for impaired or reckless driving but who were not impaired by alcohol (as shown by low BAC levels).

Self-reported information confirms that teenagers use marijuana in driving situations. PRIDE's *9th Annual Survey of Students*, an annual self-administered questionnaire given to students in grades 6–12, sampled 129,560 students in 26 states during the 1995–1996 school year. Students in the 12th grade reported that 20.0% smoke marijuana in a car, 16.3% drink beer in a car, 12.5% drink liquor in a car, and 9.5% drink wine coolers in a car. When all senior high school students were asked if and where they use marijuana, they reported: 23.9% at a friend's house, 15.9% in a car, 11.6% at home, 6.5% at school, and 19.5% in other places.

In informal discussions with almost 6,000 teenagers conducted for this task force by youth-oriented organizations including Students Against Driving Drunk (SADD), PRIDE, the National 4-H, and the United National Indian Tribal Youth, about two-thirds reported that they personally know someone who has driven a car after using marijuana or another drug.

State Laws Regarding Driving Under the Influence of Drugs

It is illegal in all states to drive a motor vehicle under the influence of either alcohol, drugs other than alcohol, or a combination of alcohol and other drugs. The term "drug" (other than alcohol) varies from state to state. Some states include any substance that can impair driving performance while other states list specific substances. Forty-eight states and the District of Columbia have "per se" alcohol laws that make it illegal to drive with more than a specified alcohol concentration (Blood or Breath Alcohol Content, or BAC) in the driver's body, such as 0.08 or 0.10 BAC for adults. However, only seven states have a per se drug law that makes it illegal to drive with more than a specific amount of a controlled substance in the driver's body.

Most states have "implied consent" laws for drugs under which a driver implicitly consents to a chemical test if a law enforcement officer has arrested the driver for, or has probable cause to suspect that the driver has committed, a drugged driving offense. All states have implied consent laws for alcohol. Implied consent laws also allow law enforcement officers to request a physical skills test to obtain information

on the driver's level of impairment. Signs of impairment establish probable cause that a driver has been operating a motor vehicle under the influence of alcohol or other drug. Failure of a chemical test (with a BAC exceeding the state per se level), or the refusal to submit to a chemical test, results in a driver's license suspension or revocation. A few states have a "one test" rule which allows only a single chemical test (for alcohol or drugs).

Drug Testing Experiences

The Federal Government administers a drug testing program, including random testing, that covers about 467,000 Federal employees in safety- and security-sensitive positions. The program includes pre-employment, reasonable suspicion, accident or unsafe practice, random, return-to-duty, and follow-up testing. Tests are conducted under the Department of Health and Human Services's *Mandatory Guidelines for Federal Workplace Drug Testing Programs* (59 FR 29908: June 9, 1994). Under these guidelines, DHHS certifies commercial laboratories to conduct urine tests for five drug classes (marijuana, opiates, cocaine, amphetamines, and PCP). There are detailed protocols for testing, a chain of custody procedure, confirmation testing, and a review of the results by a Medical Review Officer (MRO). These protections are a major factor in the successful defense of the program against legal challenges.

DOT requires transportation employers to conduct drug and alcohol tests on the over 8 million safety-sensitive transportation workers. Covered employees include truck and bus drivers, transit vehicle operators, airline flight crews, shipboard personnel on a wide variety of vessels, railroad operating crews, and pipeline operators. For instance, the Federal Railroad Administration (FRA) drug testing rule applies to employees subject to the Hours of Service Act (train and engine crews, employees engaged in the communication of train orders, and employees engaged in maintenance of signal systems).

The Department of Defense (DOD) requires random urinalysis of military personnel. Each year the DOD conducts 2.8 million urinalysis tests on its military population of 1.5 million uniformed personnel. Approximately 0.5% to 1% of the individuals test positive for illegal substances. Additionally, the three Military Services administer drug tests to all recruits either at Military Entrance Processing Stations or Recruit Training Commands. Even though the recruits receive

substantial advance notice that they will be drug tested, some 3.2%, or approximately 8,800 recruits, tested positive for illicit drugs in Fiscal Year 1996. DOD operates six drug-testing laboratories for the analysis of military personnel drug specimens.

In addition to these broad Federal programs, drug testing programs also are conducted in other contexts, such as for state, local and private employees; high school and professional athletes; and individuals who have been incarcerated in prison or who are on parole. If states were to develop drug testing programs for young people prior to their obtaining a driver's license, states should be sensitive to upholding constitutional standards under the Fourth Amendment (reasonable "search" in the procurement of the individual's blood, breath, urine, or other specimen), and under the equal protection clause and the due process clause. States also should take into account statutory requirements which may bear on the implementation of a drug testing program, such as the Age Discrimination Act and the Americans with Disabilities Act. Many drug testing programs have been challenged in court, and it is likely that drug testing programs that are developed in the future will be challenged as well. Generally, the courts have upheld drug testing programs that are reasonably designed to promote important government interests (such as protecting public safety), use proper collection procedures, and employ laboratory analysis procedures that ensure the accuracy of drug testing results.

Methods of Drug Testing

Urine testing is relatively inexpensive and represents the most widely accepted methodology for drug testing. It is scientifically reliable and, as a result, numerous state and federal courts have upheld urinalysis results. Laboratory-based urine testing is the methodology of choice for drug testing within the Federal government and the military, as well as in industry and workplace drug testing programs. On-site urinalysis is utilized on a more limited basis.

There also is an extensive body of literature on the use of blood testing. Blood testing is used in post mortem death investigations, by law enforcement officers to establish driving under the influence of drugs, in post-accident investigations conducted by the National Transportation Safety Board and the FRA, for clinical diagnosis for drug overdose purposes, and in research on pharmacologic agents. While the intrusion needed to obtain a sample is greater with blood

than with other methods, the use of blood has been accepted and routinely upheld by the courts for both criminal and civil purposes.

Hair analysis has been accepted by a number of courts for cocaine testing. However, courts also have recognized some potential limitations of its use. For example, at least two courts have observed that hair analysis may not reliably indicate that an individual used a drug one time, or sporadically, as opposed to habitual or chronic use. There is some basis for questioning its use in detecting marijuana (the drug most commonly used by young people) because of methodological problems in detecting marijuana in hair. Also, the hair of a non-smoking individual could possibly absorb ambient marijuana smoke or other smokable drugs. In addition, the use of hair analysis may raise concerns of discrimination because test results reportedly may vary according to a subject's race, gender and hair length and color.

Sweat patches and saliva testing are emerging methods that are currently being used in limited situations. Sweat patches are used in the gaming industry for pre-employment testing and saliva testing is used by the criminal justice system for monitoring parolees and prisoners. To date, there have been no reported judicial decisions that address the reliability or admissibility of these testing methods.

Drug Testing Procedures

The DOT and DHHS programs for employees use well-established collection, testing, and reporting procedures that have consistently been upheld by the courts. Under these procedures, at the time of testing, employees are directed to specific locations that are capable of collecting urine to be used in the drug tests. Employees must provide positive identification when they appear at the location. Standardized procedures are used to ensure, for example, that privacy is protected and that specific specimens belong to specific employees.

Urine specimens are forwarded from the collection sites to laboratories certified by DHHS where the drug tests are performed. All samples are screened using FDA approved immunoassay for five drug classes—marijuana, cocaine, amphetamines, opiates, and PCP. Confirmation tests are conducted on all positive screened urine specimens and results are certified by a laboratory scientist. Laboratories have fixed testing levels for screening and confirmation to rule out non-drug use (i.e., to avoid a positive result due to passive inhalation or ambient exposure).

Test results are reported to physicians (Medical Review Officers, or MROs) and, in the case of a positive result, the MRO confers with the employee to determine whether the positive test result was caused by a legitimate use of medication. A positive laboratory test due to a legitimate alternative medical explanation is reported as a negative result; non-medical use is reported to the employer as a positive result.

Some programs, such as those for state, local or private employees and athletes, use procedures that are similar (urinalysis is still used), but more varied. For example, the employees may be permitted to be tested by any laboratory, rather than a DHHS-certified laboratory, and the laboratory may use procedures for the sample's collection, handling and transportation that are not standardized. These procedures may be quicker and easier to use, but they also may offer less credibility and may be less likely to withstand a legal challenge.

Drug Testing Costs and Time Requirements

It is estimated that conducting drug tests using DOT/DHHS-approved procedures for collection, testing, MRO review, and reporting would cost \$35 to \$45 per test, and results would be available (for both screening and confirmation tests) within 3 to 5 days. These procedures require standardized collection steps that are used at over 10,000 sites across the U.S., testing at any of the 69 DHHS-certified laboratories, and review of positive results by qualified physicians.

It is estimated that once facilities are constructed and operating, conducting drug tests "on-site" (i.e., at a state Division of Motor Vehicles facility) would cost \$25 to \$45, and more if positive-screened specimens are forwarded to a laboratory for confirmation. If the results of on-site screening tests are negative, these results would be available within a few hours. If the results of these screening tests are positive, confirmation would be required and the results would be available within 3 to 5 days.

Detection of drug use could be potentially enhanced by using random testing. Costs could be reduced by randomly testing only a portion of the applicants rather than testing every applicant. It is likely that test costs would increase if specimens other than urine are used. For example, according to DHHS, the cost range for a blood test is from \$50–\$200. Saliva test costs are similar to blood (\$50–\$200) and hair testing costs are \$50–\$100.

Intervention and Treatment for Drugs

Within appropriate legal limitations, those who test positive for drugs at the time of driver's license application should be given the opportunity to obtain counseling, treatment, or other appropriate interventions. Persons who test positive may only be experimenting with drugs or they may have a serious substance abuse problem. Those who test positive should be assessed and referred to appropriate interventions as a condition of reapplying for a driver's license.

It is beyond the scope of this announcement to address the complex issues regarding drug assessment and intervention for youth. These issues include the assessment instruments to be used, the authority to impose interventions, what agencies should be responsible, and how assessment and treatment should be funded. In addition, constitutional protections must be considered regarding the consent of minors, particularly in the area of the right to privacy and confidentiality of medical and court records. Youth substance abusers may have multiple diagnoses, dysfunctional families that cannot provide sufficient support, or suffer from emotional or physical abuse.

With these issues in mind, the following are examples of how drug interventions for youth could be incorporated within a drug testing program. After the first positive drug test, an assessment could be conducted to determine if the youth has a substance abuse problem. If the assessment indicates no addictive disorder, interventions would not include substance abuse treatment, but would include denial of the driver's permit and could also include participation in a drug education program or other interventions as a condition of reapplying for a driver's license. If the assessment indicates that there is an addictive disorder, the interventions could include referral for a more detailed assessment and then treatment, in addition to the denial of the driver's permit and other appropriate measures. If a youth has a subsequent positive drug test, he or she would be referred for assessment and treatment if a referral had not been made previously. Interventions at this point could include driver license suspension, revocation, or denial, and could also include a curfew, fines, or the execution of a contract between youths and their parents agreeing to participate together in a treatment program. This system could be implemented within a graduated driver licensing system.

Part II—Objectives

The purpose of this announcement is to solicit applications for planning grants to support a State agency to investigate, develop and plan the implementation of a pre-driver licensure drug testing program. Recipients will be expected to use the financial award to develop a detailed pre-driver licensure drug testing program implementation plan. A subsequent grant announcement will be made in FY 1998 to fund implementation of selected demonstration programs.

Key issues to be addressed in the pre-driver licensure drug testing program implementation plan are:

1. *Responsible state agency*—The state agency that will be responsible for administering the drug testing program must be determined. The program will certainly involve the Motor Vehicle Department in as much as it will have to determine that a driver license applicant has taken and passed a required drug test. It should involve the State Substance Abuse Agency in the response to a positive drug test result (assessment, referral, or intervention).
2. *Applicants to be tested*—First-time driver's license applicants under 18 must be tested. The states may choose to test others as well. For example, states could test all first-time applicants, regardless of age (this would increase costs only slightly, since most first-time applicants are teenagers, and it would reduce litigation risks based on charges of age discrimination). Each state should consider carefully how its testing program can best address its teenage drug use problems. States may test all license applicants or a randomly-selected sample of at least 25%. Large States may wish to pilot test the drug testing program in only a part of the State.

3. *Sample collection location*—Collection arrangements (for example, at a Motor Vehicle Department, a physician's office, or another site) and procedures can be left to the states if procedures are in place to ensure donor privacy and verify that a specific specimen belongs to a specific donor.

4. *Drugs included in tests*—Demonstration states must test for marijuana, the drug most commonly used by youth. Other drugs also may be tested at the states' discretion. In particular, states may test different drugs in different communities or at different times to address drugs in current use.

5. *Testing methods used*—The government-standard methodology of urine screening, with confirmation by Gas Chromatography/Mass

Spectrometry (GC/MS), is recommended. States may choose other methods if they can demonstrate that these methods are scientifically and legally supportable.

6. *Testing at times and places other than initial licensing*—As part of the demonstration program, it is hoped that states will include testing for cause (after a traffic violation or crash). Such testing requirements could be incorporated into a graduated licensing program for beginning drivers.

7. *Consequence of a positive test*—Driver license applicants should not be permitted to reapply for a specified period of time. States may wish to allow shorter suspension times for youth who are successfully carrying out assigned drug treatment programs.

8. *Medical Review Officer (MRO)*—It is recommended that a medical review officer be involved in reviewing all positive test results. Upon request of the applicant, all confirmed positive tests should be reported to an MRO to determine if legitimate medical reasons, under Federal law, exist to explain the positive test results. If a legitimate medical reason exists, the MRO should report the result as a negative test.

9. *Intervention and treatment*—All state demonstrations should include procedures to evaluate individuals who test positive for drugs and refer them to intervention and treatment programs where appropriate.

10. *Evaluation plan*—Each state demonstration must evaluate and report on its operations and results. The evaluations would analyze the effects of each demonstration on teenage drug use and would report on any unexpected effects. During implementation of the demonstration programs DOT will conduct an independent evaluation which will compare and report on all the demonstrations.

Consultant Support

Recipients are encouraged during the planning grant to obtain expertise in a variety of areas including: (1) Drug use patterns in their state; (2) legal issues pertaining to testing of minors and the relevant state laws pertaining to drug testing driver license applicants; (3) drug testing methodology and procedures; (4) drug testing costs and time requirements; (5) intervention and treatment programs for drugs; and (6) evaluation design and data requirements.

Planning Meeting

Shortly after initial awards have been made, recipients will be encouraged to attend a planning meeting in Washington, DC, during which NHTSA

will bring together State and Federal (DOT, ONDCP, DHHS, DOE, and DOJ) staff and outside experts to discuss issues relevant to developing an effective, practical, and permissible pre-driver licensure drug testing program. Issues to be discussed at this meeting will include legal issues, drug testing methodology and procedures, costs, intervention and treatment options, positive drug test notification options, and evaluation design and data requirements. Funds to support travel of state staff to such a meeting should be included in the budgets submitted. For budget purposes, applicants should assume the meeting will be held over a two-day period.

NHTSA Involvement

NHTSA will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of the Grant and to coordinate activities between the Grantee and NHTSA.
2. Serve as a liaison between DOT's Office of Drug and Alcohol Policy and Compliance, the Office of National Drug Control Policy, DHHS (including the Substance Abuse and Mental Health Services Administration—SAMHSA and the National Institute of Drug Abuse—NIDA), DOE, and DOJ and others (e.g., American Association of Motor Vehicle Administrators—AAMVA) interested in the pre-driver licensure drug testing approach and the activities of the grantee.
3. Provide information and technical assistance from government sources within available resources and as determined appropriate by the COTR.
4. Stimulate the transfer of information among grant recipients and others interested in grant activities.

Funding Support

The Presidential Initiative on Drugs, Driving and Youth calls for \$16 million to be made available to fund the pre-driver licensure demonstration program. Subject to the availability of funds, up to \$2 million of these funds would be used to support the planning grants covered by this announcement. It is anticipated that the balance of the funding for the implementation grants would be covered under a separate announcement and would be provided over the next three fiscal years (FY 1998 through FY 2000). These additional funds would be sufficient to cover two (2) to four (4) demonstration and evaluation projects for a period of two years. It is anticipated that each planning grant award made under this announcement will be in the \$25,000 to

\$50,000 range, depending on the number of acceptable applications.

Period of Performance

The period of performance for this grant program will be six months from the effective date of award.

Additional Information

Subject to availability of funds, the Substance Abuse and Mental Health Services Administration/Center for Substance Abuse Treatment (SAMHSA/CSAT), in its FY 1998 program to expand drug treatment for adolescents, plans to give priority to States participating in the pre-driver licensure drug testing demonstration program.

Part III—Application Requirements

Eligibility

Only applications received from a State agency will be considered. Applications may be submitted by state driver licensing agencies, health (substance abuse) agencies, or a combination of both. Collaboration during the pre-application phase is encouraged, however, only one application will be considered from a State.

Application Procedures and Contents

Each applicant must submit one original and five copies of the application package to: NHTSA, Office of Contracts and Procurement (NAD-30), ATTN: Joe Comella, 400 7th Street, SW, Room 5301, Washington, DC 20590. Applications shall be limited to 20 pages, typed on one side of the page only, and must include a reference to NHTSA Grant Program No. DTNH22-97-G-05277. Resumes or qualification statements are not included in the page count. *Only complete packages received on or before August 12, 1997 will be considered.*

Applications for this program must include the following:

1. *Standard Form 424 (Application for Federal Assistance)*—Application Cover Sheet
2. *Standard Form 424A (Budget Information—Non-Construction Programs)*—A separate budget justification should be included to explain fully and justify major items (e.g., personnel, fringe benefits, travel, equipment, supplies, sub-contracts, consultants, indirect charges)
3. *Standard Form 424B (Assurances—Non-Construction Programs)*—Required assurances.
4. *A Project Narrative Statement*—this should be clear, concise, and address the following topics:
 - a. A description of how the project will be managed, including how the

recipient intends to organize the planning process, and what state agencies will participate and the role they will play.

b. The application shall identify the proposed project manager and any support personnel considered critical to the successful accomplishment of this project. Resumes or qualification statements and a brief description of their respective organizational responsibilities should be included separately.

c. What issues will be addressed during the planning process (at a minimum these must include the issues listed under Part II—Objectives).

d. A schedule designed to meet the six month deadline for preparation of an implementation plan.

e. A description of the evaluation approach proposed to determine how well the program is implemented, the strengths and weakness of the proposed approach, and the effectiveness of the program in accomplishing its objectives.

Terms and Conditions of Award

1. Prior to award, each grantee must comply with the certification requirements of 49 CFR part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR part 29, Department of Transportation government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug Free Workplace (Grants).

2. Reporting Requirements and Deliverables:

A. A Progress Report to be submitted half-way through the grant period that should include a summary of the activities and accomplishments to-date, as well as the proposed activities to complete the planning process. Any decisions and actions required in the upcoming quarter should be included in the report. The grantee shall supply the progress report to the Contracting

Officer's Technical Representative (COTR) three (3) months following date of award.

B. Final Report and Implementation Plan: The grantee shall prepare a Final Report and Implementation Plan that includes a description of the issues addressed during the planning process, the process followed, and how the issues were resolved. The Implementation Plan should address issues including: who should be tested, when and by whom should they be tested, for what drugs, and under what circumstances. It should also address the issue of how the grantee proposes to evaluate the program once implemented. This evaluation plan should include a description of the design, data elements, and how the effects of the program will be determined. The grantee shall submit the Final Report and Implementation Plan to the COTR by the end of the performance period.

3. Receipt of a planning grant under this announcement does not guarantee award of a Phase 2 Implementation Grant, though the advanced planning will clearly enhance the recipient's ability to prepare a detail proposal for the Phase 2 Implementation Grant.

4. During the effective performance period of grants awarded as a result of this announcement, the agreement as applicable to the grantee, shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreements.

Part IV—Application Review Process

Timely application packages from eligible applicants will be reviewed to confirm that they include all of the items specified in the Application Procedures and Contents section of this announcement. Each complete application from an eligible recipient will then be evaluated by an Evaluation Committee to determine whether the

applicant demonstrates an adequate understanding of the requirements for a pre-driver licensure drug testing program, has proposed to use the federal funds in a manner consistent with the objectives specified in Part II, has provided a reasonable plan for accomplishing the objectives of the project within the time frame set out in this announcement, and has proposed an acceptable budget. Each of these criteria will be rated as acceptable or unacceptable. Only proposals rated acceptable on every criteria will be eligible for funding.

Issued on: June 26, 1997.

James Hedlund,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 97-17306 Filed 7-1-97; 8:45 am]

BILLING CODE 4910-59-P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determinations

AGENCY: United States Information Agency.

ACTION: Notice; correction.

In notice document 97-15583, appearing on page 32405 in the issue of Friday, June 13, 1997, in the third column, in the seventh line, the text following the words "exhibit objects at" is incorrect. The corrected text reads as follows: "the Jewish Museum of New York, NY, from June 14, 1997, to on or about October 31, 1997, is in the national interest."

Dated: June 26, 1997.

Les Jin,

General Counsel.

[FR Doc. 97-17239 Filed 7-1-97; 8:45 am]

BILLING CODE 8230-01-M

Corrections

Federal Register

Vol. 62, No. 127

Wednesday, July 2, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket No. RP96-338-004

Texas Eastern Transmission Corporation; Notice of Compliance Filing

Correction

In notice document 97-16711, appearing on page 34449, in the issue of

Thursday, June 26, 1997, the "Docket No.", should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-942-1430-01; UTU 42966]

Public Land Order No. 7264; Revocation of Secretarial Order Dated March 12, 1931, Which Established Power Site Classification No. 259; Utah

Correction

In notice document 97-15029, appearing on page 31620, in the issue of Tuesday, June 10, 1997, make the following correction:

On page 31620, in the second column, the subject heading should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97-ASO-4]

Amendment to Class E Airspace; Macon, GA

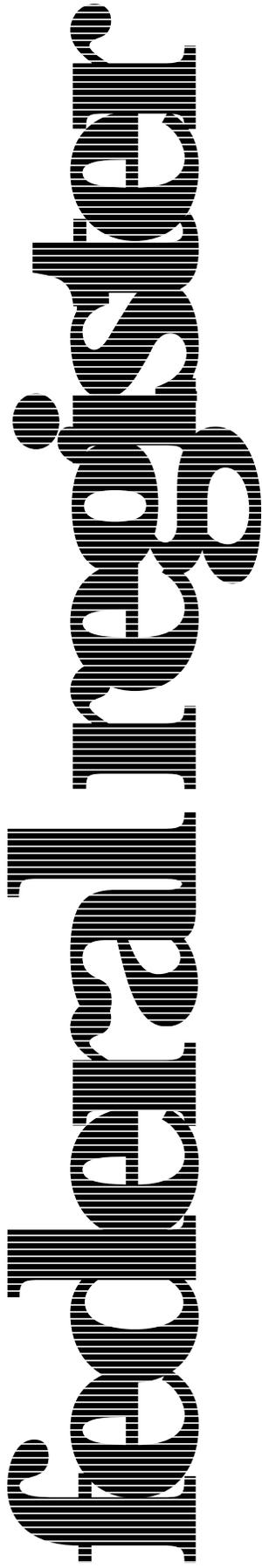
Correction

In rule document 97-16461, beginning on page 33988, in the issue of Tuesday, June 24, 1997, make the following correction:

§ 71.1 [Corrected]

On page 33989, in the second column, in § 71.1, under **ASO GA E5 Macon, GA [Revised]**, in the second line, "long. 83°3'857"W" should read "long. 83°38'57"W".

BILLING CODE 1505-01-D



Wednesday
July 2, 1997

Part II

**Department of
Commerce**

**Request for Comments on the
Registration and Administration of
Internet Domain Names; Notice**

DEPARTMENT OF COMMERCE

[Docket No. 970613137-7137-01]

Request for Comments on the Registration and Administration of Internet Domain Names

AGENCY: Department of Commerce.

ACTION: Notice; request for public comment.

SUMMARY: The Department of Commerce requests comments on the current and future system(s) for the registration of Internet domain names. The Department invites the public to submit written comments in paper or electronic form.¹

DATES: Comments must be received by August 18, 1997.

ADDRESSES: Mail written comments to Patrice Washington, Office of Public Affairs, National Telecommunications and Information Administration (NTIA), Room 4898, 14th St. and Constitution Ave., NW, Washington, DC 20230. See **SUPPLEMENTARY INFORMATION** for electronic access and filing addresses and further information on submitting comments.

FOR FURTHER INFORMATION CONTACT: Paula Bruening, NTIA, (202) 482-1816.

SUPPLEMENTARY INFORMATION:**Electronic Access and Filing Addresses**

The address for comments submitted in electronic form is dns@ntia.doc.gov. Comments submitted in electronic form should be in WordPerfect, Microsoft Word, or ASCII format. Detailed information about electronic filing is available on the NTIA website, <http://www.ntia.doc.gov>.

Further Information on Submitting Comments

Submit written comments in paper or electronic form at the above addresses. Paper submissions should include three paper copies and a version on diskette in the formats specified above. To assist reviewers, comments should be numbered and organized in response to questions in accordance with the five sections of this notice (Appropriate Principles, General/Organizational Framework Issues, Creation of New gTLDs, Policies for Registries, and Trademark Issues). Commenters should address each section on a separate page and should indicate at the beginning of their submission to which questions they are responding.

¹ This request for public comment is not intended to supplant or otherwise affect the work of other public advisory groups, established under law.

Background

The rapid growth in the use of the Internet has led to increasing public concern about the current Internet domain name registration systems. According to Internet Monthly Report, registration of domain names within a few top-level domains (.com, .net, .org) has increased from approximately 400 per month in 1993 to as many as 70,000 per month in 1996, the overwhelming majority in the .com category. The enormous growth and commercialization of the Internet has raised numerous questions about current domain name registration systems. In addition, the present system will likely undergo modification when the National Science Foundation's cooperative agreement (NSF agreement) with Network Solutions Inc. to register and administer second-level domains for three top-level domains expires in 1998. Resolution of these issues will also affect the future operation of the National Information Infrastructure (NII) and the Global Information Infrastructure (GII).

The United States Government played a central role in the initial development, deployment, and operation of domain name registration systems, and through the NSF agreement as well as Defense Advanced Research Projects Agency (DARPA) agreement(s) continues to play a role. In recent years, however, Internet expansion has been driven primarily by the private sector. The Internet has operated by consensus rather than by government regulation. Many believe that the Internet's decentralized structure accounts at least in part for its rapid growth.

The Government has supported the privatization and commercialization of the Internet through actions such as the transition from the NSFNET backbone to commercial backbones. The Government supports continued private sector leadership for the Internet and believes that the transition to private sector control should continue. The stability of the Internet depends on a fully interconnected and interoperable domain name system that must be preserved during any transition.

Various private sector groups have proposed systems for allocating and managing generic top level domains (gTLDs). The Government is studying the proposals and the underlying issues to determine what role, if any, it should play. The Government has not endorsed any plan at this time but believes that it is very important to reach consensus on these policy issues as soon as possible.

The United States Government seeks the views of the public regarding these proposals and broader policy issues as well. Specifically, the Government seeks information on the following issues:

A. Appropriate Principles

The Government seeks comment on the principles by which it should evaluate proposals for the registration and administration of Internet domain names. Are the following principles appropriate? Are they complete? If not, how should they be revised? How might such principles best be fostered?

a. Competition in and expansion of the domain name registration system should be encouraged. Conflicting domains, systems, and registries should not be permitted to jeopardize the interoperability of the Internet, however. The addressing scheme should not prevent any user from connecting to any other site.

b. The private sector, with input from governments, should develop stable, consensus-based self-governing mechanisms for domain name registration and management that adequately defines responsibilities and maintains accountability.

c. These self-governance mechanisms should recognize the inherently global nature of the Internet and be able to evolve as necessary over time.

d. The overall framework for accommodating competition should be open, robust, efficient, and fair.

e. The overall policy framework as well as name allocation and management mechanisms should promote prompt, fair, and efficient resolution of conflicts, including conflicts over proprietary rights.

f. A framework should be adopted as quickly as prudent consideration of these issues permits.

B. General/Organizational Framework Issues

1. What are the advantages and disadvantages of current domain name registration systems?

2. How might current domain name systems be improved?

3. By what entity, entities, or types of entities should current domain name systems be administered? What should the makeup of such an entity be?

4. Are there decision-making processes that can serve as models for deciding on domain name registration systems (e.g., network numbering plan, standard-setting processes, spectrum allocation)? Are there private/public sector administered models or regimes that can be used for domain name registration (e.g., network numbering plan, standard setting processes, or

spectrum allocation processes)? What is the proper role of national or international governmental/non-governmental organizations, if any, in national and international domain name registration systems?

5. Should generic top level domains (gTLDs), (e.g., .com), be retired from circulation? Should geographic or country codes (e.g., .US) be required? If so, what should happen to the .com registry? Are gTLD management issues separable from questions about International Standards Organization (ISO) country code domains?

6. Are there any technological solutions to current domain name registration issues? Are there any issues concerning the relationship of registrars and gTLDs with root servers?

7. How can we ensure the scalability of the domain name system name and address spaces as well as ensure that root servers continue to interoperate and coordinate?

8. How should the transition to any new systems be accomplished?

9. Are there any other issues that should be addressed in this area?

C. Creation of New gTLDs

10. Are there technical, practical, and/or policy considerations that constrain the total number of different gTLDs that can be created?

11. Should additional gTLDs be created?

12. Are there technical, business, and/or policy issues about guaranteeing the scalability of the name space associated with increasing the number of gTLDs?

13. Are gTLD management issues separable from questions about ISO country code domains?

14. Are there any other issues that should be addressed in this area?

D. Policies for Registries

15. Should a gTLD registrar have exclusive control over a particular gTLD? Are there any technical limitations on using shared registries for some or all gTLDs? Can exclusive and non-exclusive gTLDs coexist?

16. Should there be threshold requirements for domain name registrars, and what responsibilities should such registrars have? Who will determine these and how?

17. Are there technical limitations on the possible number of domain name registrars?

18. Are there technical, business and/or policy issues about the name space raised by increasing the number of domain name registrars?

19. Should there be a limit on the number of different gTLDs a given registrar can administer? Does this depend on whether the registrar has exclusive or non-exclusive rights to the gTLD?

20. Are there any other issues that should be addressed in this area?

E. Trademark Issues

21. What trademark rights (e.g., registered trademarks, common law trademarks, geographic indications, etc.), if any, should be protected on the Internet vis-a-vis domain names?

22. Should some process of preliminary review of an application for registration of a domain name be required, before allocation, to determine if it conflicts with a trademark, a trade name, a geographic indication, etc.? If so, what standards should be used? Who should conduct the preliminary review? If a conflict is found, what should be done, e.g., domain name applicant and/or trademark owner notified of the

conflict? Automatic referral to dispute settlement?

23. Aside from a preliminary review process, how should trademark rights be protected on the Internet vis-a-vis domain names? What entity(ies), if any, should resolve disputes? Are national courts the only appropriate forum for such disputes? Specifically, is there a role for national/international governmental/nongovernmental organizations?

24. How can conflicts over trademarks best be prevented? What information resources (e.g. databases of registered domain names, registered trademarks, trade names) could help reduce potential conflicts? If there should be a database(s), who should create the database(s)? How should such a database(s) be used?

25. Should domain name applicants be required to demonstrate that they have a basis for requesting a particular domain name? If so, what information should be supplied? Who should evaluate the information? On the basis of what criteria?

26. How would the number of different gTLDs and the number of registrars affect the number and cost of resolving trademark disputes?

27. Where there are valid, but conflicting trademark rights for a single domain name, are there any technological solutions?

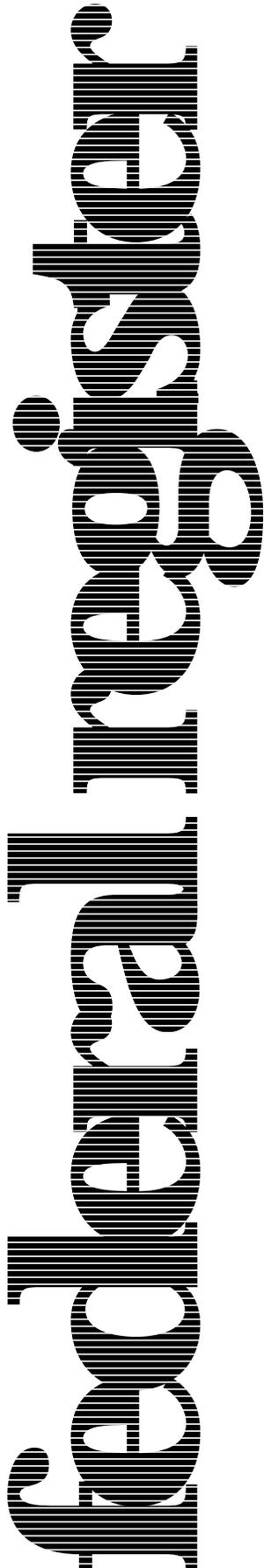
28. Are there any other issues that should be addressed in this area?

William M. Daley,

Secretary.

[FR Doc. 97-17215 Filed 7-1-97; 8:45 am]

BILLING CODE 3510-60-U



Wednesday
July 2, 1997

Part III

**Department of Defense
General Services
Administration**

**National Aeronautics and
Space Administration**

48 CFR Part 31, et al.
Federal Acquisition Regulation; Transfer
of Assets Following a Business
Combination; Contract Quality
Requirements; Proposed Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 96-006]

RIN 9000-AH56

Federal Acquisition Regulation;
Transfer of Assets Following a
Business Combination

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to implement a final rule of the Cost Accounting Standards (CAS) Board regarding the treatment of gains and losses attributable to tangible capital assets subsequent to business mergers or combinations. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: Comments on the proposed rule should be submitted in writing to the FAR Secretariat at the address shown below on or before September 2, 1997 to be considered in the formulation of the final rule.

ADDRESSES: *Comments:* Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

Internet: E-mail comments should be addressed to: farcase.96-006@gsa.gov.

Please cite FAR case 96-006 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR case 96-006.

SUPPLEMENTARY INFORMATION:

A. Background

On February 13, 1996, the CAS Board published a final rule in the **Federal**

Register (61 FR 5520) amending CAS 9904.404, Capitalization of Tangible Assets, and CAS 9904.409, Depreciation of Tangible Capital Assets. These amendments provide for "no step-up, no step-down" of asset bases (values would remain the same) after a business combination using the purchase method of accounting if tangible capital assets generated depreciation or cost of money charged to Government contracts in the seller's prior accounting year. However, if these costs were not charged to Government contracts in the seller's prior accounting period, the rule allows the assets to be adjusted to their fair values.

The proposed FAR rule is consistent with the CAS Board's approach and the Government's long-standing policy that the Government be placed in no worse of a position by virtue of a change in business ownership than it would have been had the change not taken place. This policy recognizes that costs related to asset write-ups do not add value or produce additional benefits for the Government. When a contractor's assets are written up following a business combination, an inherent inequity is present if the Government is charged depreciation and cost of money more than once for the same assets, with no added value or benefit to Government contracts. Since the proposed rule's approach does not recognize that the sale of the asset took place, *i.e.*, "no step-up, no step-down," the proposed rule also does not recognize any gains or losses when assets generated depreciation or cost of money charged to Government contracts in the seller's prior accounting period.

The Councils considered, but did not adopt, a significant alternative which would have retained the current FAR cost principles' approach of following Generally Accepted Accounting Principles (GAAP), not CAS, for non-CAS covered contracts. The current cost principles, in concert with GAAP, do not recognize asset write-ups, but do require assets to be written-down if the book value of acquired assets is reduced to be consistent with the purchase price of an acquired company. The Councils believe that the "no step-up, no step-down" approach of the proposed rule is more equitable to contractors with non-CAS covered contracts than retention of the current approach. In addition, the proposed rule will avoid complications that could arise from differences in accounting between CAS covered and non-CAS covered contracts for companies that come in and out of being CAS covered.

B. Regulatory Flexibility Act

The proposed change to FAR part 31 is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use the simplified acquisition procedures or are awarded on a competitive fixed-price basis, and the cost principles do not apply. In addition, this rule is limited to contractors who have undergone a business merger or combination. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR part will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 96-006), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: June 24, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Part 31 be amended as set forth below:

PART 31—CONTRACT COST
PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205-10 is amended by revising paragraph (a)(5) to read as follows:

31.205-10 Cost of money.

(a) * * *

(5) The requirements of 31.205-52 shall be observed in determining the allowable cost of money attributable to including asset valuations resulting from business combinations in the facilities capital employed base.

* * * * *

3. Section 31.205-52 is revised to read as follows:

31.205-52 Asset valuations resulting from business combinations.

(a) For tangible capital assets, when the purchase method of accounting for a business combination is used, whether or not the contract or subcontract is subject to CAS, the allowable depreciation and cost of money shall be the amount measured and assigned in accordance with 48 CFR 9904.404-50(d), if allocable, reasonable, and not otherwise unallowable.

(b) For intangible capital assets, when the purchase method of accounting for a business combination is used, allowable amortization, cost of money, and depreciation shall be limited to the total of the amounts that would have been allowed had the combination not taken place.

[FR Doc. 97-17151 Filed 7-1-97; 8:45 am]

BILLING CODE 6820-EP-U

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 46 and 52**

[FAR Case 96-009]

RIN 9000-AH61

**Federal Acquisition Regulation;
Contract Quality Requirements**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulation Council are proposing to amend the Federal Acquisition Regulation (FAR) to reflect a preference for commercial contract quality requirements, rather than Federal or military specifications. This regulatory action is not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before September 2, 1997 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.96-009@gsa.gov.

Please cite FAR case 96-009 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR case 96-009.

SUPPLEMENTARY INFORMATION:**A. Background**

This rule proposes to amend FAR 46.202-4(b), 46.311, and 52.246-11 to replace references to Government specifications with references to commercial quality standards in the list of examples of higher-level contract quality requirements, and to permit solicitations to identify one or more acceptable higher-level quality requirements.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely substitutes commercial quality standards for Government standards as examples of higher-level contract quality requirements which may be invoked, and permits the Government more flexibility in specifying higher-level contract quality requirements. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected parts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 96-009), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 46 and 52

Government procurement.

Dated: June 24, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 46 and 52 be amended as set forth below.

1. The authority citation for 48 CFR Parts 46 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 46—QUALITY ASSURANCE

2. Section 46.202-4 is revised to read as follows:

§ 46.202-4 Higher-level contract quality requirements.

(a) Higher-level contract quality requirements are appropriate in solicitations and contracts for complex and critical items (see 46.203 (b) and (c) or when the technical requirements of the contract require—

(1) Control of work operations, in-process controls, inspection, etc.; or

(2) Attention to organization, planning, work instructions, documentation control, advanced metrology, etc.

(b) If it is in the Government's interest to require that higher-level contract quality requirements be maintained, the contracting officer shall use the clause prescribed at 46.311 to require the contractor to comply with a Government-specified inspection system, quality control system, or quality program (e.g., ISO 9001, 9002, or 9003; ANSI/ASQC Q9001, Q9002, or Q9003; ANSA/ASQC E4; ANSE/ASME NQA-1, or other higher-level contract quality requirement). The contracting officer shall consult technical personnel before including either a specific, or a range of acceptable higher-level quality requirements in a contract.

3. Section 46.311 is revised to read as follows:

§ 46.311 Higher-level contract quality requirement.

The contracting officer shall insert the clause at 52.246-11, Higher-Level Contract Quality Requirement, in solicitations and contracts when the inclusion of either a specific, or a range of acceptable higher-level contract quality requirements is appropriate (see 46.202-4).

**PART 52—SOLICITATION PROVISIONS
AND CONTRACT CLAUSES**

4. Section 52.246-11 is revised to read as follows:

§ 52.246-11 Higher-Level Contract Quality Requirement.

As prescribed in 46.311, insert the following clause:

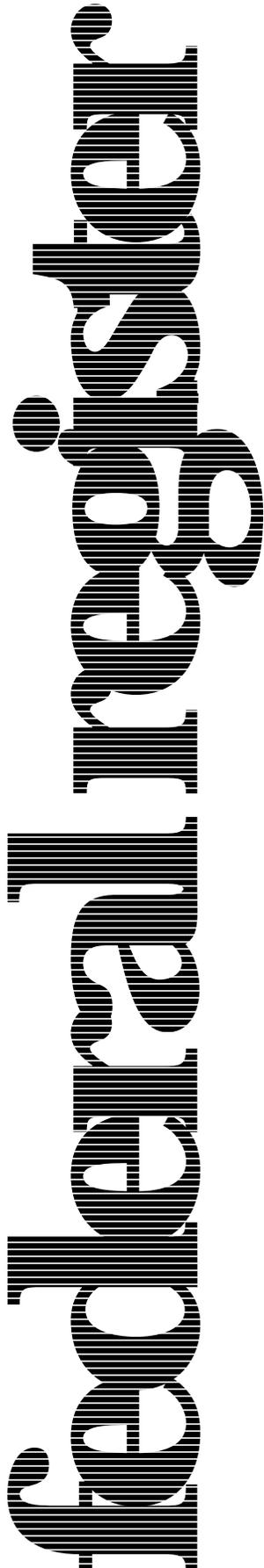
Higher-Level Contract Quality Requirement
(XXX 1997)

The Contractor shall comply with the higher-level contract quality requirement titled _____ [*Contracting Officer insert the title number, and date of the higher-level contract quality requirement*], which is hereby incorporated into this contract.

(End of clause)

[FR Doc. 97-17150 Filed 7-1-97; 8:45 am]

BILLING CODE 6820-EP-M



Wednesday
July 2, 1997

Part IV

Department of the Treasury

Internal Revenue Service
26 CFR Parts 54 and 602

Department of Labor

Pension and Welfare Benefits
Administration
29 CFR Part 2590

**Department of Health and
Human Services**

Health Care Financing Administration
45 CFR Parts 146 and 148

**Approval of Information Collection
Requirements for the Joint Interim Rules
for Health Insurance Portability for Group
Health Plans, and the Individual Market
Health Insurance Reform: Portability From
Group to Individual Coverage; Federal
Rules for Access in the Individual
Market; State Alternative Mechanisms to
Federal Rules; Interim Rules**

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Parts 54 and 602**

[T.D. 8716]

RIN 1545-AV05

DEPARTMENT OF LABOR**Pension and Welfare Benefits Administration****29 CFR Part 2590**

RIN 1210-AA54

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Health Care Financing Administration****45 CFR Parts 146 and 148**

RIN 0938-A108; RIN 0938-AH75

Approval of Information Collection Requirements for the Joint Interim Rules for Health Insurance Portability for Group Health Plans, and the Individual Market Health Insurance Reform: Portability From Group to Individual Coverage; Federal Rules for Access in the Individual Market; State Alternative Mechanisms to Federal Rules

AGENCIES: Internal Revenue Service, Department of the Treasury; Pension and Welfare Benefits Administration, Department of Labor; Health Care Financing Administration, Department of Health and Human Services.

ACTION: Interim rules with request for comments; approval of information collection requirements.

SUMMARY: On April 8, 1997, the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services (Departments) published joint interim rules governing the access, portability and renewability requirements for group health plans and issuers offering group health insurance coverage in connection with a group health plan. The rules implemented changes made to certain provisions of the Internal Revenue Code of 1986 (Code), the Employee Retirement Income Security Act of 1974 (ERISA), and the Public Health Service Act (PHS Act) enacted as part of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). In the April 8 publication, the Departments submitted the group market information collection requirements, for, among other things, establishing creditable

coverage, notice of special enrollment rights, and notice of pre-existing condition exclusion periods, to the Office of Management and Budget (OMB) for emergency review under the Paperwork Reduction Act of 1995 (PRA 95). In addition, on April 8, 1997 the Department of Health and Human Services submitted the HIPAA individual market information collection requirements to OMB for emergency review under PRA 1995. This document amends the April 8 **Federal Register** documents to properly display the OMB control numbers.

DATES: These amendments are effective June 1, 1997.

FOR FURTHER INFORMATION CONTACT:

Russ Weinheimer, Internal Revenue Service, at 202-622-4695; Gerald Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, Room N-5647, Washington, DC 20210, at 202-219-4782; John Burke, Department of Health and Human Services, Health Care Financing Administration, at 410-786-1325. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The interim regulations published on April 8, 1997 (62 FR 16894 and 16985), contained distinct information collection requests (ICRs) for the group and individual insurance markets. The ICRs issued by the Department of the Treasury and the Department of Labor apply to employers and group health plans. The ICRs issued by the Department of Health and Human Services apply to health insurance issuers.

Department of the Treasury and Department of Labor ICRs

The ICRs on group health plans' obligations regarding Establishing Prior Creditable Coverage and Notice of Enrollment Rights are prescribed by the statute. The ICRs regarding the certification and special enrollment notice obligations of health insurance issuers are addressed separately in the Department of Health and Human Services' ICR.

The first ICR implements statutorily prescribed requirements necessary to establish Prior Creditable Coverage. This is accomplished primarily through the issuance of certificates of prior coverage by group health plans or by service providers with which the group health plans contract in order to provide these documents. In addition this ICR permits the use of a notice that may be used by the plans to meet their obligations in connection with periods of coverage ending during the transition period,

October 1, 1996 through May 31, 1997, saving the respondents both hours and cost during that period. This ICR also covers the requests that certain plans will make regarding additional information they require because they are using the Alternative Method of Crediting Coverage. Finally, this ICR also includes the occasional circumstances where a participant is unable to secure a certificate and needs to provide some supplemental form of documentation in order to establish prior creditable coverage.

The second ICR, Notice of Enrollment Rights, imposes disclosure obligations on plans to inform a participant, at the time of enrollment, of the plan's special enrollment rules.

The third ICR, Notice of Pre-existing Condition Exclusion, concerns the disclosure requirements on those plans that contain pre-existing condition exclusion provisions. This ICR has two components: a notice to all participants at the time of the enrollment stating the terms of the plan's pre-existing condition provisions, the participant's rights to demonstrate creditable coverage, and that the plan or issuer will assist in securing a certificate as necessary; and notice by the plan of its determination that an exclusion period applies to an individual.

Department of Health and Human Services ICRs

The Department of Health and Human Services separately issued two Information Collection Requirements. The first one, titled Information Collection Requirements referenced in HIPAA for the Individual Insurance Market, will ensure that the issuers in the individual market will provide individuals with documentation necessary to demonstrate prior creditable coverage. These information collection requirements will also give the States the flexibility to implement State alternative mechanisms to protect HIPAA eligible individuals.

The second information collection requirements, titled Information Collection Requirements referenced in HIPAA for the Group Health Plans, will ensure that the issuers in the group market will provide individuals with documentation necessary to demonstrate prior creditable coverage, and that group health plans notify individuals of their special enrollment rights in the group health insurance market.

Approval

OMB reviewed the Department of the Treasury's collection of information collection in accordance with the

Paperwork Reduction Act of 1995 (PRA 95). On May 30, 1997, under OMB control number 1545-1537, OMB approved the information collection requests contained in (1) 26 CFR 54.9801-3T, 54.9801-4T and 54.9801-5T on rules relating to the notices regarding preexisting condition exclusion periods; (2) 26 CFR 54.9801-5T on rules relating to establishing prior coverage; and (3) 26 CFR 54.9801-6T on rules relating to special enrollment periods. These information collection provisions are currently approved until November 30, 1997.

OMB also reviewed the Department of Labor's collection of information requirements in accordance with the PRA 95, 44 U.S.C. chapter 35, and 5 CFR 1320.11. On May 30, 1997, OMB approved the information collection requirements contained in 29 CFR 2590.701-6 for Notice of Special Enrollment Rights under OMB control number 1210-0101. OMB also approved the information collection requirements contained in 29 CFR 2590.701-3, 2590.701-4, and 2590.701-5 for Notice of Preexisting Condition Exclusion under OMB clearance number 1210-0102. In addition, OMB approved the information collection requirements contained in 29 CFR 2590.701-5 for Establishing Prior Creditable Coverage under OMB control number 1210-0103. These information collection provisions are currently approved until December 31, 1997.

Finally, OMB reviewed the Department of Health and Human Services' collection of information requests in accordance with the PRA 95. On May 30, 1997, under OMB control number 0938-0702, OMB approved the information collection requests contained in 45 CFR 146.111, 146.115, 146.117, 146.150, 146.152, 146.160 and 146.180 for issuers in the group market on demonstrating prior creditable coverage and notice of special enrollment rights. On the same day, under OMB control number 0938-0703, OMB also approved the information collection requests contained in 45 CFR 148.120, 148.122, 148.124, and 148.128 for issuers in the individual market on demonstrating prior creditable coverage and State alternative mechanisms. These information collection requests are currently approved until December 31, 1997.

Statutory Authorities

The Department of the Treasury temporary rule is adopted pursuant to the authority contained in 26 U.S.C. 7805 and in 26 U.S.C. 9806, as added by Section 401 (Pub. L. 104-191, 101 Stat. 1936).

The Department of Labor interim final rule is adopted pursuant to the authority contained in 29 U.S.C. 1027, 1059, 1135, 1171, 1194; Section 101, Public L. 104-191, 101 Stat. 1936 (29 U.S.C. 1181); Secretary of Labor's Order No. 1-87, 52 FR 13139, April 21, 1987.

The Department of Health and Human Services interim final rule is adopted pursuant to the authority contained in Sections 2701 through 2723 of the Public Health Service Act (PHS Act, 42 U.S.C. 300gg, et. seq.), Sections 2741 through 2763 of the PHS Act, and 2791 through 2792 of the PHS Act as amended by HIPAA.

List of Subjects

26 CFR Part 54

Excise taxes, Health insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2590

Employee benefit plans, Employee Retirement Income Security Act, Group health plans, Health care, Health insurance, Reporting and recordkeeping requirements, Welfare benefit plans.

45 CFR Parts 146 and 148

Health care, Health insurance, Reporting and recordkeeping requirements, State regulation of health insurance.

Internal Revenue Service

26 CFR Chapter I

Accordingly, 26 CFR Part 602 is amended as follows:

PART 602—[AMENDED]

1. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

2. In § 602.101, paragraph (c) is amended by adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

CFR part or section where identified and described	Current OMB control No.
* * * * *	
(c) * * *	
54.9801-3T	1545-1537
54.9801-4T	1545-1537
54.9801-5T	1545-1537
54.9801-6T	1545-1537
* * * * *	

Dale D. Goode,
Federal Register Liaison, Assistant Chief Counsel (Corporate).

Pension and Welfare Benefits Administration

29 CFR Chapter XXV

Accordingly, 29 CFR Part 2590 is amended as follows:

PART 2590—[AMENDED]

1. The authority citation for Part 2590 continues to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1171, 1194; Sec. 101, Pub. L. 104-191, 101 Stat. 1936 (29 U.S.C. 1181); Secretary of Labor's Order No. 1-87, 52 FR 13139, April 21, 1987.

2. In § 2590.701-3, by adding a parenthetical at the end of the section to read as follows:

§ 2590.701-3 Limitations on preexisting condition exclusion period.

* * * * *
(Approved by the Office of Management and Budget under control number 1210-0102.)

3. In § 2590.701-4, by adding a parenthetical at the end of the section to read as follows:

§ 2590.701-4 Rules relating to creditable coverage.

* * * * *
(Approved by the Office of Management and Budget under control number 1210-0102.)

4. In § 2590.701-5, by adding a parenthetical at the end of the section to read as follows:

§ 2590.701-5 Certification and disclosure of previous coverage.

* * * * *
(Approved by the Office of Management and Budget under control numbers 1210-0102 and 1210-0103.)

5. In § 2590.701-6, by adding a parenthetical at the end of the section to read as follows:

§ 2590.701-6 Special enrollment periods.

* * * * *
(Approved by the Office of Management and Budget under control number 1210-0101.)

Signed at Washington D.C. this 24th day of June, 1997.

Alan D. Lebowitz,
Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, Department of Labor.

Health Care Financing Administration

45 CFR Subtitle A, Subchapter B

Accordingly, 45 CFR Parts 146 and 148 are amended as follows:

PART 146—[AMENDED]

1. The authority citation for Part 146 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the PHS Act, 42 U.S.C. 300gg through 300gg-63, 300gg-91 and 300gg-92.

2. In § 146.111, by adding a parenthetical at the end of the section to read as follows:

§ 146.111 Limitations on preexisting condition exclusion period.

* * * * *

(Approved by the Office of Management and Budget under control number 0938-0702.)

3. In § 146.115, by adding a parenthetical at the end of the section to read as follows:

§ 146.115 Certification and disclosure of previous coverage.

* * * * *

(Approved by the Office of Management and Budget under control number 0938-0702.)

4. In § 146.117, by adding a parenthetical at the end of the section to read as follows:

§ 146.117 Special enrollment periods.

* * * * *

(Approved by the Office of Management and Budget under control number 0938-0702.)

5. In § 146.150, by adding a parenthetical at the end of the section to read as follows:

§ 146.150 Guaranteed availability of coverage for employers in the group market.

* * * * *

(Approved by the Office of Management and Budget under control number 0938-0702.)

6. In § 146.152, by adding a parenthetical at the end of the section to read as follows:

§ 146.152 Guaranteed renewability of coverage for employers in the group market.

* * * * *

(Approved by the Office of Management and Budget under control number 0938-0702.)

7. In § 146.160, by adding a parenthetical at the end of the section to read as follows:

§ 146.160 Disclosure of information.

* * * * *

(Approved by the Office of Management and Budget under control number 0938-0702.)

8. In § 146.180, by adding a parenthetical at the end of the section to read as follows:

§ 146.180 Treatment of non-Federal governmental plans.

* * * * *

(Approved by the Office of Management and Budget under control number 0938-0702.)

PART 148—[AMENDED]

9. The authority citation for Part 148 continues to read as follows:

Authority: Secs. 2741 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg-41 through 300gg-63, 300gg-91 and 300gg-92).

10. In § 148.120, by adding a parenthetical at the end of the section to read as follows:

§ 148.120 Guaranteed availability of individual health insurance coverage to certain individuals with prior group coverage.

* * * * *

(Approved by the Office of Management and Budget under control number 0938-0703.)

11. In § 148.122, by adding a parenthetical at the end of the section to read as follows:

§ 148.122 Guaranteed renewability of individual health insurance coverage.

* * * * *

(Approved by the Office of Management and Budget under control number 0938-0703.)

12. In § 148.124, by adding a parenthetical at the end of the section to read as follows:

§ 148.124 Certification and disclosure of coverage.

* * * * *

(Approved by the Office of Management and Budget under control number 0938-0703.)

13. In § 148.128, by adding a parenthetical at the end of the section to read as follows:

§ 148.128 State flexibility in individual market reforms—alternative mechanisms.

* * * * *

(Approved by the Office of Management and Budget under control number 0938-0703.)

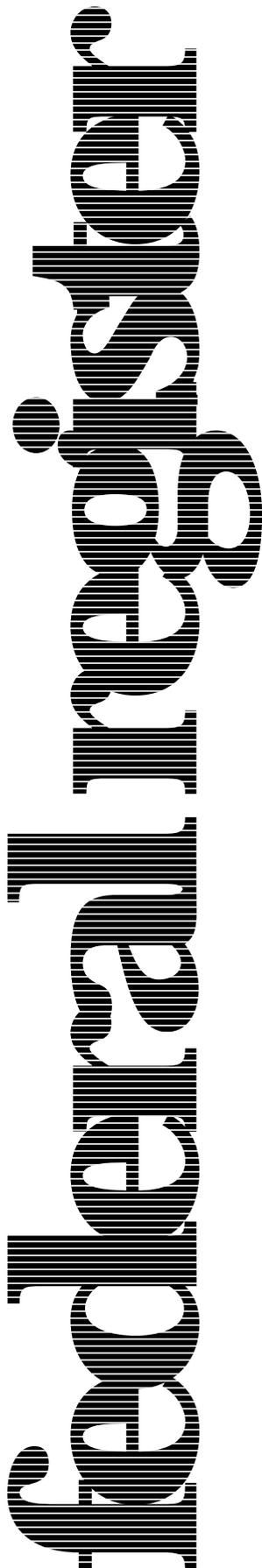
Dated: June 26, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration, Department of Health and Human Services.

[FR Doc. 97-17379 Filed 7-1-97; 8:45 am]

BILLING CODE 4120-03-P; 4830-01-P; 4510-29-P



Wednesday
July 2, 1997

Part V

The President

Proclamation 7011—To Implement the World Trade Organization Ministerial Declaration on Trade in Information Technology Products and the Agreement on Distilled Spirits

Executive Order 13053—Adding Members to and Extending the President's Council on Sustainable Development

Presidential Documents

Title 3—

Proclamation 7011 of June 30, 1997

The President

To Implement the World Trade Organization Ministerial Declaration on Trade in Information Technology Products and the Agreement on Distilled Spirits

By the President of the United States of America

A Proclamation

1. On December 13, 1996, the first Ministerial Meeting of the World Trade Organization (“the WTO”) issued a Declaration On Trade In Information Technology Products (“the ITA”), which established a framework for expanding world trade in information technology products and enhancing market access opportunities for such products. To implement that declaration, 42 WTO members and governments in the process of acceding to the WTO agreed to eliminate duties on information technology products. These products encompass computers and computer equipment, semiconductors and integrated circuits, computer software products, telecommunications equipment, semiconductor manufacturing equipment, and computer-based analytical instruments. The participants further agreed on the common objective of achieving, where appropriate, a common classification of such goods for tariff purposes within the existing nomenclature of the Harmonized Commodity Description and Coding System (HS), and on a possible future joint suggestion to the World Customs Organization to update existing HS nomenclature or to otherwise remedy any divergence in classification of such goods or in interpretation of the HS nomenclature.
2. The United States and the European Union, on behalf of its 15 member states, also reached agreement at the WTO Ministerial Meeting on the elimination of duties on certain distilled spirits.
3. Section 111(b) of the Uruguay Round Agreements Act (URAA)(19 U.S.C. 3521(b)) authorizes the President to proclaim the modification of any duty or staged rate reduction of any duty set forth in Schedule XX for products in tariff categories that were the subject of reciprocal duty elimination or harmonization negotiations during the Uruguay Round, if the United States agrees to such action in a multilateral negotiation under the auspices of the WTO and after compliance with the requirements of section 115 of the URAA (19 U.S.C. 3524). The products covered by the ITA and the Agreement on Distilled Spirits were the subject of reciprocal duty elimination negotiations during the Uruguay Round.
4. Accordingly, pursuant to section 111(b) of the URAA, I have determined to proclaim modifications in the tariff categories and rates of duty set forth in the Harmonized Tariff Schedule (“the HTS”), as set forth in the Annexes to this proclamation.
5. Proclamation 6763 of December 23, 1994, implemented the tariff and other customs treatment resulting from the Uruguay Round of multilateral trade negotiations, as set forth in Schedule XX, with respect to the United States. Proclamation 6641 of December 15, 1993, implemented the North American Free Trade Agreement (“the NAFTA”) with respect to the United States and incorporated in the HTS the tariff modifications and rules of origin necessary or appropriate to carry out or apply the NAFTA. Certain tariff provisions established by these proclamations, including staged reductions in rates of duty, and certain NAFTA rules of origin must be modified

in light of the implementation of the ITA, to ensure that the previously proclaimed tariff and other customs treatment will be continued, and to take into account the tariff treatment provided for in the ITA. Accordingly, I have determined to modify the HTS in order to continue or provide such tariff and other customs treatment.

6. Section 604 of the Trade Act of 1974, as amended ("the 1974 Act") (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 111(b) of the URAA and section 604 of the 1974 Act, do hereby proclaim:

(1) In order to provide for the immediate or staged elimination of duties on the information technology products covered by the ITA and on certain distilled spirits, and to make conforming changes in other provisions, the HTS is modified as set forth in the Annexes to this proclamation.

(2) The modifications to the HTS made by this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the dates specified in the Annexes to this proclamation.

(3) All provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of June, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.



Annex I

Modifications to the Harmonized Tariff
Schedule of the United States ("HTS")

The Harmonized Tariff Schedule of the United States ("HTS") is modified as provided below, with bracketed matter included to assist in the understanding of proclaimed modifications. The following supersedes matter in the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special", and "Rates of Duty 2", respectively.

Section A. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1996, the tariff classification rules ("TCRs") of subdivision (t) of general note 12 are modified by redesignating TCR 5 for chapter 85 as TCR 5A, and by inserting the following new TCR 5 immediately after TCR 4 for such chapter:

"5. A change to tariff item 8504.40.40 from any other tariff item, except from tariff item 8504.90.70."

Section B. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 1997.

(1). General note 4(d) is modified by deleting "8471.49.37 Argentina", "8471.60.57 Argentina", "8471.70.50 Philippines", "8524.99.40 Argentina" and "8536.90.00 Argentina" and by inserting "8524.99.60 Argentina", "8524.99.90 Argentina", "8536.90.40 Argentina" and "8536.90.80 Argentina" in numerical sequence.

(2). General note 11(d)(viii) is modified by deleting "2208.40.00" and inserting "2208.40" in lieu thereof.

(3). The tariff classification rules ("TCRs") of subdivision (t) of general note 12 are modified as follows:

(a). TCR 129(A), TCR 130(B), TCR 131(B), TCR 132(B), TCR 133, TCR 134(B), TCR 135, TCR 136, TCR 137(A)(2), TCR 137(B)(2), TCR 138, TCR 139(A)(2), TCR 139(B)(2), TCR 140, TCR 141(A)(2), TCR 141(B)(2), TCR 142, TCR 143(A)(2), TCR 143(B)(2), TCR 144, TCR 145(A)(2), TCR 145(B)(2), TCR 146, TCR 147(B), TCR 148, TCR 149(B), TCR 150, TCR 151(B), TCR 152, TCR 153(B), TCR 154, TCR 155(B), TCR 156, TCR 157(B), TCR 159(B), TCR 161(B), TCR 164(B) and TCR 166(B) for chapter 84 are each modified by deleting from such rules "8466.93.30 or 8466.93.45," and inserting "8466.93.30, 8466.93.47 or 8466.93.53," in lieu thereof.

(b). TCR 158, TCR 160, TCR 162, TCR 163, TCR 165 and TCR 167 for chapter 84 are each modified by deleting from such rules "8466.93.30 or 8466.93.45." and inserting "8466.93.30, 8466.93.47 or 8466.93.53." in lieu thereof.

(c). TCR 168, TCR 170, TCR 172, TCR 174, TCR 176, TCR 178 and TCR 179 for chapter 84 are each modified by deleting from such rules "8466.94.60 or" and inserting "8466.94.55, 8466.94.65 or" in lieu thereof.

(d). TCR 169(B), TCR 171(B), TCR 173(B), TCR 175(B) and TCR 177(B) for chapter 84 are each modified by deleting from such rules "8466.94.20 or 8466.94.60" and inserting "8466.94.20, 8466.94.55 or 8466.94.65" in lieu thereof.

(e). TCR 207 for chapter 84 is modified by deleting from such rule "item 8473.10.30" and inserting "items 8473.10.20 or 8473.10.40" in lieu thereof.

(f). TCR 222, TCR 223 and TCR 224 for chapter 84 are each modified by deleting from such rules "item 8477.90.20" and inserting "items 8477.90.15 or 8477.90.25" in lieu thereof.

Annex I (continued)
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Section B. (con.)

(3). (con.):

(g). TCR 222(A) and TCR 223(A) for chapter 84 are each modified by deleting from such rules "item 8477.90.40," and inserting "items 8477.90.35 or 8477.90.45," in lieu thereof.

(h). TCR 224(A) for chapter 84 is modified by deleting from such rule "item 8477.90.60," and inserting "items 8477.90.55 or 8477.90.65," in lieu thereof.

(i). TCR 5 for chapter 85 is modified by deleting from such rule "item 8504.90.70" and inserting "items 8504.90.65 or 8504.90.75" in lieu thereof.

(j). TCR 77, 79, 79A, 80(C), 82, 83 and 94 for chapter 85 are each modified by deleting from such rule "8529.90.19 or 8529.90.23" and inserting "8529.90.19, 8529.90.22 or 8529.90.24" in lieu thereof.

(k). TCR 84, 92A, 92B and 92K for chapter 85 are each modified by deleting from such rule "8529.90.23" and inserting "8529.90.22, 8529.90.24" in lieu thereof.

(l). TCR 99 for chapter 85 is modified by deleting from such rule "8529.90.73 or 8529.90.76" and inserting "8529.90.73, 8529.90.74 or 8529.90.77" in lieu thereof.

(m). TCR 100(A) and 100(B) for chapter 85 are each modified by deleting from such rule "8529.90.83 or 8529.90.85" and inserting "8529.90.83, 8529.90.84 or 8529.90.87" in lieu thereof.

(n). TCR 104 for chapter 85 is modified by deleting from such rule "item 8531.90.40." and inserting "items 8531.90.10 or 8531.90.30." in lieu thereof.

(o). TCR 106 for chapter 85 is modified by deleting from such rule "item 8531.90.40:" and inserting "items 8531.90.10 or 8531.90.30:" in lieu thereof.

(p). TCR 117(A), TCR 117(B), TCR 120(A), TCR 120(B), TCR 121(A) and TCR 121(B) for chapter 85 are each modified by deleting from such rules "items 8538.90.20" and inserting "items 8538.90.10, 8538.90.30" in lieu thereof.

(q). TCR 144(A) and TCR 144(B) for chapter 85 are each modified by deleting from such rules "items 8543.90.15 or 8543.90.55" and inserting "items 8543.90.15, 8543.90.64 or 8543.90.68" in lieu thereof.

(r). TCR 70 for chapter 90 is modified by deleting from such rule "items 9030.90.25 or 9030.90.65" and inserting "items 9030.90.25, 9030.90.64 or 9030.90.68" in lieu thereof.

(4). Subheading 2208.40.00 is superseded by:

	[Undenatured ethyl alcohol of an...:]			
"2208.40	Rum and tafia:			
	In containers each holding not over 4			
	liters:			
2208.40.20	Valued not over \$3 per proof			
	liter.....	See section A	Free (A+,CA,E,	\$1.32/pf.
		of Annex II	IL)	liter
		to this	22.2¢/pf.	
		proclamation	liter (MX)	
2208.40.40	Valued over \$3 per proof liter.....	See section A	Free (A+,CA,E,	\$1.32/pf.
		of Annex II	IL)	liter"
		to this	22.2¢/pf.	
		proclamation	liter (MX)	

Annex I (continued)

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Section B. (con.)

(4). (con.):

	[Undenatured ethyl alcohol of an...:] Rum and tafia (con.):			
"2208.40 (con.)				
	In containers each holding over 4 liters:			
2208.40.60	Valued not over 69¢ per proof liter.....	See section A of Annex II to this proclamation	Free (A+,CA,E, IL) 22.2¢/pf. liter (MX)	\$1.32/pf. liter
2208.40.80	Valued over 69¢ per proof liter.....	See section A of Annex II to this proclamation	Free (A+,CA,E, IL) 22.2¢/pf. liter (MX)	\$1.32/pf. liter"

(5). Subheading 7017.10.00 is superseded by:

	[Laboratory, hygienic or...]			
"7017.10 7017.10.30	Of fused quartz or other fused silica: Quartz reactor tubes and holders designed for insertion into diffusion and oxidation furnaces for production of semiconductor wafers.....	See section A of Annex II to this proclamation	Free (A,E,IL,J, MX) 0.5% (CA)	50%
7017.10.60	Other.....	See section A of Annex II to this proclamation	Free (A,E,IL,J, MX) 0.5% (CA)	50%"

(6). Heading 7020.00.00 is superseded by:

"7020.00 7020.00.30	Other articles of glass: Quartz reactor tubes and holders designed for insertion into diffusion and oxidation furnaces for production of semiconductor wafers.....	See section A of Annex II to this proclamation	Free (A,E,IL,J, MX) 0.6% (CA)	55%
7020.00.60	Other.....	See section A of Annex II to this proclamation	Free (A,E,IL,J, MX) 0.6% (CA)	55%"

(7). The additional U.S. notes to chapter 84 are modified:

(a). by deleting "8479.89.95" from additional U.S. note 1 and inserting "8479.89.97" in lieu thereof, and by deleting "8479.90.95" from such note and inserting "8479.90.97" in lieu thereof.

(b). by inserting the following new additional U.S. note:

- "3. For the purposes of subheadings 8466.10.40, 8466.20.40, 8466.30.20 and 8466.30.40, the expression "machines described in additional U.S. note 3 to chapter 84" means any of the following machines: machines of subheading 8456.10.60; machines of subheading 8456.91; machines of 8456.99.10; machines of subheading 8456.99.70; machines of subheading 8462.21.40 or 8462.29.40; machines of subheading 8464.10 for sawing monocrystal semiconductor boules into slices, or wafers into chips; machines of subheading 8464.20.10; machines of subheading 8464.90.10; machines of subheading 8464.90.60."

Annex I (continued)

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Section B. (con.)

(8). Subheadings 8421.19.00 and 8421.91.60 are superseded and the following inserted, in numerical sequence, in lieu thereof:

[Centrifuges, including centrifugal...:]				
[Centrifuges, including centrifugal dryers:]				
"8421.19	Other:			
8421.19.30	Spin dryers for semiconductor wafer processing.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	25%
8421.19.90	Other.....	See section A of Annex II to this proclamation	Free (A,C,CA,E, IL,J,MX)	25%"
[Parts:]				
[Of centrifuges,....:]				
"8421.91.70	Of spin driers of subheading 8421.19.30.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	25%
8421.91.90	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	25%"

(9). Subheadings 8424.30.90, 8424.89.90 and 8424.90.90 are superseded and the following inserted, in numerical sequence, in lieu thereof:

[Mechanical appliances (whether or....)]				
[Steam or sand blasting...:]				
"8424.30.40	Deflash machines for cleaning and removing contaminants from the metal leads of semiconductor packages prior to the electroplating process (deflash by projectile beads).....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%
8424.30.80	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%"
[Other appliances:]				
[Other:]				
"8424.89.50	Spraying appliances for developing semiconductor wafers; spraying appliances for etching, developing, stripping or cleaning flat panel displays; deflash machines for cleaning and removing contaminants from the metal leads of semiconductor packages prior to the electroplating process (deflash by high pressure spray).....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%
8424.89.70	Other.....	See section A of Annex II to this proclamation	Free (A,B,CA,E, IL,J,MX)	35%"
[Parts:]				
"8424.90.60	Of spraying appliances of subheading 8424.89 for etching, developing, stripping or cleaning semiconductor wafers and flat panel displays.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%
8424.90.80	Other.....	See section A of Annex II to this proclamation	Free (A,B,CA,E, IL,J,MX)	35%"

Annex I (continued)

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Section B. (con.)

(10). The article description for subheading 8424.89.30 is modified by deleting the word "designed".

(11). Subheadings 8428.20.00, 8428.33.00, 8428.39.00 and 8428.90.00 are superseded and the following inserted, in numerical sequence, in lieu thereof:

	[Other lifting, handling, loading or...:]				
"8428.20	Pneumatic elevators and conveyors:				
8428.20.40	Automated machines for transport, handling and storage of semiconductor wafers, wafer cassettes, wafer boxes and other material for semiconductor devices.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%	
8428.20.80	Other.....	See section A of Annex II to this proclamation	Free (A,B,C,CA, E,IL,J,MX)	35%"	
	[Other continuous-action elevators....:]				
"8428.33	Other, belt type:				
8428.33.40	Automated machines for transport, handling and storage of semiconductor wafers, wafer cassettes, wafer boxes and other material for semiconductor devices.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%	
8428.33.80	Other.....	See section A of Annex II to this proclamation	Free (A,B,C,CA, E,IL,J,MX)	35%	
8428.39	Other:				
8428.39.40	Automated machines for transport, handling and storage of semiconductor wafers, wafer cassettes, wafer boxes and other material for semiconductor devices.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%	
8428.39.80	Other.....	See section A of Annex II to this proclamation	Free (A,B,C,CA, E,IL,J,MX)	35%	
8428.90	Other machinery:				
8428.90.40	Automated machines for transport, handling and storage of semiconductor wafers, wafer cassettes, wafer boxes and other material for semiconductor devices.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J) 0.4% (MX)	35%	
8428.90.80	Other.....	See section A of Annex II to this proclamation	Free (A,B,C,CA, E,IL,J) 0.4% (MX)	35%"	

Annex I (continued)
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Section B. (con.)

(12). Subheading 8431.39.00 is superseded by:

[Parts suitable for use solely or principally with the machinery of headings 8425 to 8430:]				
[Of machinery of heading 8428:]				
"8431.39	Other:			
8431.39.40	Of automated machines for transport, handling and storage of semiconductor wafers, wafer cassettes, wafer boxes and other material for semiconductor devices.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%
8431.39.80	Other.....	See section A of Annex II to this proclamation	Free (A,B,CA,E, IL,J,MX)	35%"

(13). Subheadings 8456.10.50 and 8456.99.50 are superseded and the following inserted, in numerical sequence, in lieu thereof:

[Machine tools for working any...:]				
[Operated by laser or other light or...:]				
"Other:				
8456.10.60	For use in the production of semiconductor wafers; lasercutters for cutting contacting tracks in semiconductor production.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%
8456.10.80	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%"
[Other:]				
[Other:]				
"Other:				
8456.99.70	For stripping and cleaning semiconductor wafers.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%
8456.99.90	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%"

(14). The article description for subheading 8456.99.10 is modified by deleting the word "designed", and by deleting the expression "of semiconductor device designs" and inserting in lieu thereof "for patterns on semiconductor devices".

(15). Subheadings 8462.21.00 and 8462.29.00 are superseded by:

[Machine tools (including presses) for...:]				
[Bending, folding, straightening or...:]				
Numerically controlled:				
"8462.21	For bending, folding and straightening semiconductor leads...	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	30%
8462.21.40				
8462.21.80	Other.....	4.4%	Free (A,CA,E,IL, J,MX)	30%
Other:				
8462.29	For bending, folding and straightening semiconductor leads...	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	30%
8462.29.40				
8462.29.80	Other.....	4.4%	Free (A,CA,E,IL, J,MX)	30%"

Annex I (continued)

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Section B. (con.)

(16). The article description for subheading 8464.20.10 is modified by deleting the expression "Machines designed to process" and inserting in lieu thereof "For processing of".

(17). The article description for subheading 8464.90.10 is modified by deleting such description and inserting in lieu thereof "For scribing or scoring semiconductor wafers; for wet-etching semiconductor wafers".

(18). Subheading 8464.90.50 is superseded by:

[Machine tools for working stone,...:]					
[Other:]					
"8464.90.60	For wet-developing or -stripping semiconductor wafers; for wet-etching, -developing, or -stripping flat panel displays.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%	
8464.90.90	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%"	

(19). Subheading 8465.99.00 is superseded by:

[Machine tools (including machines for...)]					
[Other:]					
"8465.99.8465.99.40	Deflash machines for cleaning and removing contaminants from the metal leads of semiconductor packages prior to the electroplating process (deflash by chemical bath).....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%	
8465.99.80	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%"	

(20). Subheadings 8466.10.00, 8466.20.90, 8466.30.30, 8466.30.50, 8466.91.50, 8466.93.45, 8466.93.90, 8466.94.60 and 8466.94.80 are superseded and the following inserted, in numerical sequence, in lieu thereof:

[Parts and accessories suitable for use...:]					
"8466.10.8466.10.40	Tool holders and self-opening dieheads: Tool holders for the machines described in additional U.S. note 3 to chapter 84.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	45%	
8466.10.80	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	45%"	
"8466.20.8466.20.40	[Work holders:] For the machines described in additional U.S. note 3 to chapter 84.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%	
8466.20.80	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%"	

Annex I (continued)

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Section B. (con.)

(20). (con.):

	[Parts and accessories suitable for use...:]			
	[Dividing heads and other special...:]			
	[Other special attachments:]			
	"For the machines described in additional U.S. note 3 to chapter 84:			
8466.30.20	Machines.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%
8466.30.40	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	45%
	Other:			
8466.30.60	Machines.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%
8466.30.80	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	45%"
	[Other:]			
	[For machines of headings 8464:]			
	"Other:			
8466.91.40	Of machines of subheading 8464.10 for sawing monocrystal semiconductor boules into slices, or wafers into chips; of machines of subheading 8464.20.10; of machines of subheading 8464.90.10; of machines of subheading 8464.90.60.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%
8466.91.80	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%"
	[For machines of headings 8456 to 8461:]			
	[Bed, base, table, head,...:]			
	[Other:]			
"8466.93.47	Of machines of subheading 8456.10.60; of machines of subheading 8456.91; of machines of 8456.99.10; of machines of subheading 8456.99.70.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%
8466.93.53	Other.....	4.7%	Free (A,CA,E,IL, J,MX)	35%"
	[Other:]			
	[Other:]			
"8466.93.85	Of machines of subheading 8456.10.60; of machines of subheading 8456.91; of machines of 8456.99.10; of machines of subheading 8456.99.70.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%
8466.93.95	Other.....	4.7%	Free (A,CA,E,IL, J,MX)	35%"

Annex I (continued)

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Section B. (con.)

(20). (con.):

	[Parts and accessories suitable for use...:]			
	[Other:]			
	[For machines of heading 8462 or 8463:]			
	[Other:]			
	"Bed, base, table, column, cradle, frame, bolster, crown, slide, rod, tailstock and headstock castings, weldments or fabrications:			
8466.94.55	Of machines of subheading 8462.21.40 or 8462.29.40.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%
8466.94.65	Other.....	4.7%	Free (A,CA,E,IL, J,MX)	35%
	Other:			
8466.94.75	Of machines of subheading 8462.21.40 or 8462.29.40.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%
8466.94.85	Other.....	4.7%	Free (A,CA,E,IL, J,MX)	35%

(21). Subheading 8470.10.00 is modified by deleting from the Rates of Duty 1-Special subcolumn the "Free" rate of duty and the symbols and parentheses following such rate, and by deleting from the Rates of Duty 1-General subcolumn the rate "2.6%" and inserting "Free" in lieu thereof.

(22). Subheading 8470.40.00 is modified by deleting from the Rates of Duty 1-Special subcolumn the "Free" rate of duty and the symbols and parentheses following such rate, and by deleting from the Rates of Duty 1-General subcolumn the rate "1.6%" and inserting "Free" in lieu thereof.

(23). Subheadings 8470.90.00, 8471.49.10, 8473.21.00 and 8473.29.00 are each modified by deleting from the Rates of Duty 1-Special subcolumn the "Free" rate of duty and the symbols and parentheses following such rate, and by deleting from the Rates of Duty 1-General subcolumn the rate "2.7%" and inserting "Free" in lieu thereof.

(24). Subheadings 8471.49.15, 8471.49.31, 8471.49.33, 8471.49.35, 8471.49.36, 8471.49.48, 8471.49.50, 8471.49.95, 8471.60.10, 8471.60.51, 8471.60.53, 8471.60.55, 8471.60.56, 8471.60.90, 8471.70.30, 8471.70.90, 8471.80.90 and 8471.90.00 are each modified by deleting from the Rates of Duty 1-Special subcolumn the "Free" rate of duty and the symbols and parentheses following such rate, and by deleting from the Rates of Duty 1-General subcolumn the rate "1.5%" and inserting "Free" in lieu thereof.

(25). Subheadings 8471.49.37, 8471.60.57 and 8471.70.50 are each modified by deleting from the Rates of Duty 1-Special subcolumn the "Free" rate of duty and the symbols and parentheses following such rate, and by deleting from the Rates of Duty 1-General subcolumn the rate "1.5%" and inserting "Free" in lieu thereof.

(26). Subheadings 8471.49.70 and 8504.40.70 are each modified by deleting from the Rates of Duty 1-Special subcolumn the "Free" rate of duty and the symbols and parentheses following such rate, and by deleting from the Rates of Duty 1-General subcolumn the rate "1.2%" and inserting "Free" in lieu thereof.

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(27). Subheadings 8471.50.40 and 8471.50.80 are superseded by:

"8471.50.00	[Automatic data processing machines and...] Digital processing units other than those of subheading 8471.41 and 8471.49, whether or not containing in the same housing one or two of the following types of unit: storage units, input units, output units.....	Free	35%"
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(28). Subheadings 8472.90.20 and 8472.90.90 are superseded and the following inserted, in numerical sequence, in lieu thereof:

[Other office machines...] [Other:]			
"8472.90.10	Automatic teller machines.....	Free	35%
8472.90.95	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX) 35%"

(29). Subheadings 8473.10.30, 8473.40.20 and 8473.40.90 are superseded and the following inserted, in numerical sequence, in lieu thereof:

[Parts and accessories (other than covers,...)] [Parts and accessories of the machines of heading 8469:] [Parts:]			
"Of word processing machines:			
8473.10.20	Printed circuit assemblies.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX) 45%
8473.10.40	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX) 45%"
[Parts and accessories of the machines of heading 8472:]			
"8473.40.10	Printed circuit assemblies for automatic teller machines of subheading 8472.90.10.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX) 35%
8473.40.95	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX) 35%"

(30). Subheadings 8477.10.80, 8477.40.00, 8477.59.00, 8477.90.20, 8477.90.40, 8477.90.60 and 8477.90.80 are superseded and the following inserted, in numerical sequence, in lieu thereof:

[Machinery for working rubber or...] [Injection-molding machines:]			
"8477.10.70	For encapsulation in the assembly of semiconductors.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX) 35%
8477.10.90	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX) 35%
8477.40	Vacuum-molding machines and other thermoforming machines:		
8477.40.40	Transfer molding and compression molding machines for encapsulation in the assembly of semiconductors.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX) 35%
8477.40.80	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX) 35%"

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(30). (con.):

	[Machinery for working rubber or....:]				
	[Other machinery for molding or otherwise forming:]				
"8477.59 8477.59.40	Other: Liquid encapsulate molding machines for encapsulation in the assembly of semiconductors.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%	
8477.59.80	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%"	
	[Parts:]				
	"Base, bed, platen, clamp cylinder, ram, and injection castings, weldments and fabrications:				
8477.90.15	Of machines of subheading 8477.10.70, 8477.40.40 or 8477.59.40.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%	
8477.90.25	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%	
	Barrel screws:				
8477.90.35	Of machines of subheading 8477.10.70, 8477.40.40 or 8477.59.40.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%	
8477.90.45	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%	
	Hydraulic assemblies incorporating more than one of the following: manifold; valves; pump; oil cooler:				
8477.90.55	Of machines of subheading 8477.10.70, 8477.40.40 or 8477.59.40.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%	
8477.90.65	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%	
	Other:				
8477.90.75	Of machines of subheading 8477.10.70, 8477.40.40 or 8477.59.40.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%	
8477.90.85	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%"	

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(31). Subheadings 8479.89.95 and 8479.90.95 are superseded and the following inserted, in numerical sequence, in lieu thereof:

	[Machines and mechanical appliances having...:]			
	[Other machines and mechanical appliances:]			
	[Other:]			
	[Other:]			
"8479.89.87	Machines for wet-cleaning flat panel displays.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%
8479.89.97	Other.....	See section A of Annex II to this proclamation	Free (A,B,C,CA, E,IL,J,MX)	35%"
	[Parts:]			
"8479.90.93	Of chemical vapor deposition machines for semiconductor production; of machines for cleaning semiconductor wafers; of physical deposition machines for semiconductor production; of die attach machines for assembly of semiconductors; of spinners for coating photographic emulsions on semiconductor wafers; of machines for growing or pulling monocrystal semiconductor boules; of machines for wet-cleaning flat panel displays; of epitaxial deposition machines for semiconductor wafers.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%
8479.90.97	Other.....	See section A of Annex II to this proclamation	Free (A,B,C,CA, E,IL,J,MX)	35%"

(32). Subheading 8480.71.90 is superseded by:

	[Molding boxes for metal foundry,...:]			
	[Molds for rubber or plastics:]			
	[Injection or compression types:]			
"8480.71.40	For the manufacture of semiconductor devices.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%
8480.71.80	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%"

(33). The additional U.S. notes to chapter 85 are modified:

(a). by deleting "8529.90.86" wherever it appears in additional U.S. note 4 and inserting "8529.90.88" in lieu thereof.

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(33). (con.):

(b). by inserting the following new note:

"12. For the purposes of subheading 8538.90.10, the expression "articles described in additional U.S. note 12 to chapter 85" means any of the following goods: spin dryers of subheading 8421.19.30; deflash machines of subheading 8424.30 for cleaning or removing contaminants from the metal leads of semiconductor packages prior to electroplating (deflash by projectile beads); spraying appliances of subheading 8424.89.30; machines or appliances of subheading 8424.89.50; automated machinery of subheading 8428.20, 8428.33, 8428.39 or 8428.90 for transport, handling and storage of semiconductor wafers, wafer cassettes, wafer boxes and other materials for semiconductor devices; machines of subheading 8456.10.60; machines of subheading 8456.91; machines of subheading 8456.99.10; machines of subheading 8456.99.70; machines of subheading 8462.21.40 or 8462.29.40; machines of subheading 8464.10 for sawing monocrystal semiconductor boules into slices, or wafers into chips; machines of subheading 8464.20.10; machines of subheading 8464.90.10 or 8464.90.60; deflash machines of subheading 8465.99.40; articles of subheading 8469.11, heading 8470 or heading 8471; automatic teller machines of subheading 8472.90.10; machines of subheading 8477.10.70, 8477.40.40 or 8477.59.40; machines of subheading 8479.89.85 for processing of semiconductor materials or for production and assembly of diodes, transistors and similar semiconductor devices and electronic integrated circuits; machines of subheading 8479.89.87; furnaces and ovens of subheading 8514.10 or 8514.20 for the manufacture of semiconductor devices on semiconductor wafers; furnaces and ovens of subheading 8514.30.60; die attach apparatus, tape automated bonders and wire bonders of subheading 8515.80 for assembly of semiconductors; articles of heading 8517; articles of subheading 8520.20; transmission apparatus of subheading 8525.10.10 or 8525.10.90; articles of subheading 8525.20; digital still image video cameras of subheading 8525.40.40; articles of subheading 8527.90.40; paging receivers of subheading 8527.90.85; ion implanters of subheading 8543.11 designed for doping semiconductor materials; articles of subheading 8543.89.92; photocopying apparatus of subheading 9009.11 or 9009.21; apparatus of subheading 9010.41, 9010.42 or 9010.49; apparatus of subheading 9010.50.60 for the projection or drawing of circuit patterns on flat panel displays; plotters of subheading 9017.10.40 or 9017.20.70; pattern generating apparatus of subheading 9017.20.50; instruments and apparatus of heading 9026; instruments and apparatus of heading 9027 except of subheading 9027.10, 9027.40 or 9027.90.20; instruments and apparatus of subheading 9030.40; instruments and apparatus of subheading 9030.82; optical instruments and appliances of subheading 9031.41; optical instruments and appliances of subheading 9031.49.70; articles of subheading 9031.80.40."

(34). The article description for heading 8504 is modified by deleting the expression "inductors; power supplies for automatic data processing machines or units thereof of heading 8471; parts" and inserting "inductors; parts" in lieu thereof.

(35). The article description for subheading 8504.40 is modified by deleting the expression "converters; power supplies for automatic data processing machines or units thereof of heading 8471;" and inserting "converters;" in lieu thereof.

(36). Subheadings 8504.40.90, 8504.50.00 and 8504.90.70 are superseded and the following inserted, in numerical sequence, in lieu thereof:

	[Electrical transformers, static...:]			
	[Static converters:]			
"8504.40.85	For telecommunication apparatus.....	Free		35%
8504.40.95	Other.....	See section A of Annex II to this proclamation	Free (A,B,C,CA, E,IL,J,MX)	35%
8504.50	Other inductors:			
8504.50.40	For power supplies for automatic data processing machines and units thereof of heading 8471; for telecommunication apparatus.....	See section A of Annex II to this proclamation	Free (A,B,C,E, IL,J,MX) 0.3% (CA)	35%
8504.50.80	Other.....	3%	Free (A,B,C,E, IL,J,MX) 0.3% (CA)	35%"

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(36). (con.):

	[Electrical transformers, static...:]				
	[Parts:]				
	[Other:]				
	"Printed circuit assemblies:				
8504.90.65	Of the goods of subheading 8504.40 or 8504.50 for telecommunication apparatus....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%	
8504.90.75	Other.....	See section A of Annex II to this proclamation	Free (A,B,C,CA, E,IL,J,MX)	35%"	

(37). Subheadings 8514.10.00, 8514.20.00, 8514.30.40 and 8514.90.00 are superseded and the following inserted, in numerical sequence, in lieu thereof:

	[Industrial or laboratory electric...:]				
	Resistance heated furnaces and ovens:				
"8514.10					
8514.10.40	For the manufacture of semiconductor devices on semiconductor wafers.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%	
8514.10.80	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%	
8514.20	Induction or dielectric furnaces and ovens:				
8514.20.40	For the manufacture of semiconductor devices on semiconductor wafers.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%	
8514.20.80	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%"	
	[Other furnaces and ovens:]				
	"Other:				
8514.30.60	For rapid heating of semiconductor wafers.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%	
8514.30.80	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%	
8514.90	Parts:				
8514.90.40	Of articles of subheading 8514.10.40, 8514.20.40 or subheading 8514.30.60.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%	
8514.90.80	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%"	

(38). Subheadings 8515.80.00 and 8515.90.20 are superseded by:

	[Electric (including electrically...:)]				
	Other machines and apparatus:				
"8515.80					
8515.80.40	Die attach apparatus, tape automated bonders and wire bonders for assembly of semiconductors.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%	
8515.80.80	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%"	

Annex I (continued)

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(38). (con.):

	[Electric (including electrically...)]			
	[Parts:]			
	"Of welding machines and apparatus:			
8515.90.10	Of die attach apparatus, tape automated bonders and wire bonders of subheading 8515.80 for assembly of semiconductors.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%
8515.90.30	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%"

(39). Subheadings 8518.10.00, 8518.29.00, 8518.90.10 and 8518.90.30 are superseded and the following inserted, in numerical sequence, in lieu thereof:

	[Microphones and stands therefor,...:]			
"8518.10	Microphones and stands therefor:			
8518.10.40	Microphones having a frequency range of 300 Hz to 3.4 kHz with a diameter of not exceeding 10 mm and a height not exceeding 3 mm, for telecommunication use.....	See section A of Annex II to this proclamation	Free (A,B,C,E, IL,J,MX) 0.4% (CA)	35%
8518.10.80	Other.....	4.9%	Free (A,B,C,E, IL,J,MX) 0.4% (CA)	35%"
	[Loudspeakers, whether or not mounted in their enclosures:]			
"8518.29	Other:			
8518.29.40	Without housing, having a frequency range of 300 Hz to 3.4 kHz with a diameter of not exceeding 50 mm, for telecommunication use.....	See section A of Annex II to this proclamation	Free (A,B,C,E, IL,J,MX) 0.4% (CA)	35%
8518.29.80	Other.....	4.9%	Free (A,B,C,E, IL,J,MX) 0.4% (CA)	35%"
	[Parts:]			
	"Of line telephone handsets of subheading 8518.30.10; of repeaters of subheading 8518.40.10:			
8518.90.20	Printed circuit assemblies of line telephone handsets; parts of repeaters.....	See section A of Annex II to this proclamation	Free (A,B,CA,E, IL,J,MX)	35%
8518.90.40	Other.....	8.5%	Free (A,B,CA,E, IL,J,MX)	35%
8518.90.60	Other: Printed circuit assemblies of the articles of subheading 8518.10.40 or 8518.29.40.....	See section A of Annex II to this proclamation	Free (A,B,CA,E, IL,J,MX)	35%
8518.90.80	Other.....	4.9%	Free (A,B,CA,E, IL,J,MX)	35%"

(40). The article description for subheading 8518.30.10 is modified by deleting such description and inserting "Line telephone handsets" in lieu thereof.

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(41). Subheadings 8523.12.00 and 8523.13.00 are each modified by deleting from the Rates of Duty 1-Special subcolumn both the "Free" rate of duty and the symbols and parentheses following such rate and the "0.4% (CA)" rate of duty from such subcolumn, and by deleting from the Rates of Duty 1-General subcolumn the rate "1.7%" and inserting "Free" in lieu thereof.

(42). Subheadings 8524.39.00 and 8524.99.40 are superseded and the following inserted, in numerical sequence, in lieu thereof:

[Records, tapes and other recorded media...:]			
[Discs for laser reading systems:]			
"8524.39	Other:		
8524.39.40	For reproducing representations of instructions, data, sound, and image, recorded in a machine readable binary form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine; proprietary format recorded discs.....	See section A of Annex II to this proclamation	Free (A,E,IL,J, MX) 80% 0.5% (CA)
8524.39.80	Other.....	See section A of Annex II to this proclamation	Free (A,E,IL,J, MX) 80% 0.5% (CA)
[Other:]			
[Other:]			
"8524.99.60	"Other:		
	For reproducing representations of instructions, data, sound, and image, recorded in a machine readable binary form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine; proprietary format recorded media.....	See section A of Annex II to this proclamation	Free (A*,E,IL,J, MX) 86.1¢/m ² of recording surface 0.9¢/m ² of recording surface (CA)
8524.99.90	Other.....	See section A of Annex II to this proclamation	Free (A*,E,IL,J, MX) 86.1¢/m ² of recording surface 0.9¢/m ² of recording surface (CA)

(43). Subheadings 8525.10.20, 8525.10.60, 8525.10.80 and 8525.40.00 are superseded and the following inserted, in numerical sequence, in lieu thereof:

[Transmission apparatus for...:]			
[Transmission apparatus:]			
"Television:			
8525.10.10	Set top boxes which have a communication function.....	See section A of Annex II to this proclamation	Free (A+,B,CA,E, IL,J,MX) 35%
8525.10.30	Other.....	See section A of Annex II to this proclamation	Free (A+,B,CA,E, IL,J,MX) 35%"
[Other:]			
"8525.10.70	For radiobroadcasting.....	See section A of Annex II to this proclamation	Free (A,B,C,CA, E,IL,J,MX) 35%
8525.10.90	Other.....	See section A of Annex II to this proclamation	Free (A,B,C,CA, E,IL,J,MX) 35%"

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(43). (con.):

	[Transmission apparatus for...:]			
"8525.40	Still image video cameras and other video camera recorders:			
8525.40.40	Digital still image video cameras.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%
8525.40.80	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	35%"

(44). Subheadings 8525.20.90 and 8529.90.99 are each modified by deleting from the Rates of Duty 1-Special subcolumn the "Free" rate of duty and the symbols and parentheses following such rate, and by deleting from the Rates of Duty 1-General subcolumn the rate "2.4%" and inserting "Free" in lieu thereof.

(45). Subheading 8527.90.40 is modified by deleting from the Rates of Duty 1-Special subcolumn the "Free" rate of duty and the symbols and parentheses following such rate, and by deleting from the Rates of Duty 1-General subcolumn the rate "2%" and inserting "Free" in lieu thereof.

(46). Subheading 8527.90.90 is superseded by:

	[Reception apparatus for radiotelephony,...:]			
	[Other apparatus:]			
	[Other:]			
	"Other:			
8527.90.85	Paging receivers.....	See section A of Annex II to this proclamation	Free (A,B,C,CA, E,IL,J,MX)	35%
8527.90.95	Other.....	6%	Free (A,B,C,CA, E,IL,J,MX)	35%"

(47). Subheading 8528.12.88 is superseded by:

	[Reception apparatus for television, whether...:]			
	[Reception apparatus for television...:]			
	[Color:]			
	[Other:]			
	[Other:]			
	"Other:			
8528.12.92	Set top boxes which have a communications function.....	See section A of Annex II to this proclamation	Free (A+,B,E,IL, J,MX) 0.5% (CA)	35%
8528.12.96	Other.....	5%	Free (A+,B,E,IL, J,MX) 0.5% (CA)	35%"

(48). Subheading 8529.10.40 is modified by deleting from the Rates of Duty 1-Special subcolumn the "Free" rate of duty and the symbols and parentheses following such rate, and by deleting from the Rates of Duty 1-General subcolumn the rate "3.4%" and inserting "Free" in lieu thereof.

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Section B. (con.)

(49). Subheadings 8529.10.60, 8529.90.23, 8529.90.76 and 8529.90.85 are superseded and the following inserted, in numerical sequence, in lieu thereof:

[Parts suitable for use solely or...:]				
[Antennas and antenna reflectors...:]				
"Other:				
8529.10.70	Antennas and antenna reflectors of a kind used with apparatus for radiotelephony and radiotelegraphy.....	See section A of Annex II to this proclamation	Free (A,B,C,CA, E,IL,J,MX)	35%
8529.10.90	Other.....	See section A of Annex II to this proclamation	Free (A,B,C,CA, E,IL,J,MX)	35%"
[Other:]				
[Printed circuit assemblies:]				
"8529.90.22	Of articles of subheading 8525.10.90, 8525.20, 8525.40.40, 8527.90.40 or 8527.90.85.....	Free		35%
8529.90.24	Other.....	See section A of Annex II to this proclamation	Free (A,B,CA,E, IL,J,MX)	35%"
[Other, parts of printed circuit assemblies, including...:]				
"8529.90.74	Of articles of subheading 8525.10.90, 8525.20, 8525.40.40, 8527.90.40 or 8527.90.85.....	See section A of Annex II to this proclamation	Free (A,B,CA,E, IL,J,MX)	35%
8529.90.77	Other.....	See section A of Annex II to this proclamation	Free (A,B,CA,E, IL,J,MX)	35%"
[Other parts of articles of headings 8525 and 8527, except...:]				
"8529.90.84	Of articles of subheading 8525.10.90, 8525.20, 8525.40.40, 8527.90.40 or 8527.90.85.....	Free		35%
8529.90.87	Other.....	See section A of Annex II to this proclamation	Free (A,B,CA,E, IL,J,MX)	35%"

(50). Subheading 8529.90.86 is renumbered as 8529.90.88.

(51). Subheadings 8531.80.80, 8531.90.40 and 8531.90.80 are superseded and the following inserted, numerical sequence, in lieu thereof:

[Electric sound or visual signaling...:]				
[Other apparatus:]				
"Other:				
8531.80.70	Flat panel displays of paging alert devices of subheading 8531.80.40.....	See section A of Annex II to this proclamation	Free (A,B,C,CA, E,IL,J,MX)	35%
8531.80.90	Other.....	See section A of Annex II to this proclamation	Free (A,B,C,CA, E,IL,J,MX)	35%"

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Section B. (con.)

(51). (con.):

[Electric sound or visual signaling...:]				
[Parts:]				
"Printed circuit assemblies:				
8531.90.10	Of the panels of subheading 8531.20; of paging alert devices or of flat panel displays for paging alert devices of subheading 8531.80.....	See section A of Annex II to this proclamation	Free (A,B,CA,E, IL,J,MX)	35%
8531.90.30	Other.....	See section A of Annex II to this proclamation	Free (A,B,CA,E, IL,J,MX)	35%
Other:				
8531.90.70	Of the panels of subheading 8531.20; of paging alert devices or of flat panel displays for paging alert devices of subheading 8531.80.....	Free		35%
8531.90.90	Other.....	See section A of Annex II to this proclamation	Free (A,B,CA,E, IL,J,MX)	35%

(52). The article description for subheading 8532.21.00 is modified by deleting such description and inserting "Tantalum" in lieu thereof.

(53). Subheadings 8536.50.80, 8536.69.00 and 8536.90.00 are superseded and the following inserted, in numerical sequence, in lieu thereof:

[Electric apparatus for switching or...:]				
[Other switches:]				
"Other:				
8536.50.70	Electronic AC switches consisting of optically coupled input and output circuits (insulated thyristor AC switches); electronic switches, including temperature protected switches, consisting of a transistor and a logic chip (chip-on-chip technology); electromechanical snap-action switches for a current not exceeding 11 amps.....	See section A of Annex II to this proclamation	Free (A,B,E,IL, J,MX) 0.5% (CA)	35%
8536.50.90	Other.....	See section A of Annex II to this proclamation	Free (A,B,E,IL, J,MX) 0.5% (CA)	35%"
[Lamp-holders, plugs and sockets:]				
"Other:				
"8536.69 8536.69.40	Coaxial connectors; cylindrical multicontact connectors; rack and panel connectors; printed circuit connectors; ribbon or flat cable connectors.....	See section A of Annex II to this proclamation	Free (A,B,E,IL, J,MX) 0.5% (CA)	35%
8536.69.80	Other.....	See section A of Annex II to this proclamation	Free (A,B,E,IL, J,MX) 0.5% (CA)	35%"

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(53). (con.):

	[Electric apparatus for switching or...:]			
"8536.90	Other apparatus:			
8536.90.40	Terminals, electrical splices and electrical couplings; wafer probers.....	See section A of Annex II to this proclamation	Free (A*,B,E,IL, J,MX) 0.5% (CA)	35%
8536.90.80	Other.....	See section A of Annex II to this proclamation	Free (A*,B,E,IL, J,MX) 0.5% (CA)	35%"

(54). Subheading 8538.90.20 is superseded by:

	[Parts suitable for use solely or principally...:]			
	[Other:]			
	"Printed circuit assemblies:			
8538.90.10	Of an article of heading 8537 for one of the articles described in additional U.S. note 12 to chapter 85.....	See section A of Annex II to this proclamation	Free (A,B,E,IL, J,MX) 0.5% (CA)	35%
8538.90.30	Other.....	See section A of Annex II to this proclamation	Free (A,B,E,IL, J,MX) 0.5% (CA)	35%"

(55). Subheadings 8543.89.90, 8543.90.55 and 8543.90.75 are superseded and the following inserted, in numerical sequence, in lieu thereof:

	[Electrical machines and apparatus, having...:]			
	[Other machines and apparatus:]			
	[Other:]			
	[Other:]			
"8543.89.92	Electrical machines with translation or dictionary functions; flat panel displays other than for articles of heading 8528.....	See section A of Annex II to this proclamation	Free (A,B,CA,E, IL,J,MX)	35%
8543.89.96	Other.....	See section A of Annex II to this proclamation	Free (A,B,CA,E, IL,J,MX)	35%"
	[Parts:]			
	[Other:]			
	"Printed circuit assemblies:			
8543.90.64	Of ion implanters of subheading 8543.11; of flat panel displays other than for articles of heading 8528...	See section A of Annex II to this proclamation	Free (A,B,CA,E, IL,J,MX)	35%
8543.90.68	Other.....	See section A of Annex II to this proclamation	Free (A,B,CA,E, IL,J,MX)	35%
8543.90.84	Other: Of ion implanters of subheading 8543.11; of flat panel displays other than for articles of heading 8528...	See section A of Annex II to this proclamation	Free (A,B,CA,E, IL,J,MX)	35%
8543.90.88	Other.....	See section A of Annex II to this proclamation	Free (A,B,CA,E, IL,J,MX)	35%"

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(56). Subheadings 8544.41.00, 8544.49.00 and 8544.51.80 are superseded and the following inserted, in numerical sequence, in lieu thereof:

	[Insulated (including enameled or...)]				
	[Other electrical conductors, for a voltage				
	not exceeding 80 V:]				
"8544.41	Fitted with connectors:				
8544.41.40	Of a kind used for				
	telecommunications.....	See section A	Free (A,B,E,IL,	35%	
		of Annex II	J,MX)		
		to this	0.5% (CA)		
		proclamation			
8544.41.80	Other.....	See section A	Free (A,B,E,IL,	35%	
		of Annex II	J,MX)		
		to this	0.5% (CA)		
		proclamation			
8544.49	Other:				
8544.49.40	Of a kind used for				
	telecommunications.....	See section A	Free (A,B,E,IL,	40%	
		of Annex II	J,MX)		
		to this	0.5% (CA)		
		proclamation			
8544.49.80	Other.....	See section A	Free (A,B,E,IL,	40%"	
		of Annex II	J,MX)		
		to this	0.5% (CA)		
		proclamation			
	[Other electrical conductors, for a voltage				
	exceeding 80 V but not exceeding 1,000 V:]				
	[Fitted with connectors:]				
	"Other:				
8544.51.70	Of a kind used for				
	telecommunications.....	See section A	Free (A,B,E,IL,	35%	
		of Annex II	J)		
		to this	0.5% (CA)		
		proclamation	3.1% (MX)		
8544.51.90	Other.....	See section A	Free (A,B,E,IL,	35%"	
		of Annex II	J)		
		to this	0.5% (CA)		
		proclamation	3.1% (MX)		

(57). Subheadings 9009.90.30 and 9009.90.70 are each modified by deleting from the Rates of Duty 1-Special subcolumn the "Free" rate of duty and the symbols and parentheses following such rate, and by deleting from the Rates of Duty 1-General subcolumn the rate "2.6%" and inserting "Free" in lieu thereof.

(58). Subheading 9010.90.80 is superseded by:

	[Apparatus and equipment for photographic...]				
	[Parts and accessories:]				
	"Other:				
9010.90.70	Of apparatus of subheadings				
	9010.41 to 9010.49; of apparatus				
	of subheading 9010.50.60 for				
	the projection or drawing of				
	circuit patterns on flat panel				
	displays.....	See section A	Free (A,CA,E,IL,	45%	
		of Annex II	J,MX)		
		to this			
		proclamation			
9010.90.90	Other.....	See section A	Free (A,CA,E,IL,	45%"	
		of Annex II	J,MX)		
		to this			
		proclamation			

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(59). Subheadings 9013.80.60 and 9013.90.40 are superseded and the following inserted, in numerical sequence, in lieu thereof:

	[Liquid crystal devices not...:]			
	[Other devices, appliances and...:]			
"9013.80.70	Flat panel displays other than for articles of heading 8528.....	See section A of Annex II to this proclamation	Free (A,E,IL,J, MX) 0.9% (CA)	45%
9013.80.90	Other.....	See section A of Annex II to this proclamation	Free (A,E,IL,J, MX) 0.9% (CA)	45%"
	[Parts and accessories:]			
"9013.90.50	Of flat panel displays other than for articles of heading 8528.....	See section A of Annex II to this proclamation	Free (A,E,IL,J, MX) 0.9% (CA)	45%
9013.90.90	Other.....	See section A of Annex II to this proclamation	Free (A,E,IL,J, MX) 0.9% (CA)	45%"

(60). Subheadings 9017.10.00 and 9017.20.90 are superseded and the following inserted, in numerical sequence, in lieu thereof:

	[Drawing, marking-out or mathematical...:]			
"9017.10	Drafting tables and machines, whether or not automatic:			
9017.10.40	Plotters.....	See section A of Annex II to this proclamation	Free (A,E,IL,J, MX) 0.4% (CA)	45%
9017.10.80	Other.....	See section A of Annex II to this proclamation	Free (A,E,IL,J, MX) 0.4% (CA)	45%"
	[Other drawing, marking-out or...:]			
"9017.20.70	Plotters.....	See section A of Annex II to this proclamation	Free (A,E,IL,J, MX) 0.5% (CA)	45%
9017.20.80	Other.....	See section A of Annex II to this proclamation	Free (A,E,IL,J, MX) 0.5% (CA)	45%"

(61). Subheadings 9026.10.20, 9026.20.40, 9026.80.20, 9027.30.40, 9027.50.40, 9027.80.25, 9027.80.45 and 9030.40.00 are each modified by deleting from the Rates of Duty 1-Special subcolumn the "Free" rate of duty and the symbols and parentheses following such rate, and by deleting from the Rates of Duty 1-General subcolumn the rate "3%" and inserting "Free" in lieu thereof.

(62). Subheadings 9026.10.60, 9026.20.80, 9026.80.60 and 9026.90.60 are each modified by deleting from the Rates of Duty 1-Special subcolumn the "Free" rate of duty and the symbols and parentheses following such rate, and by deleting from the Rates of Duty 1-General subcolumn the rate "2.8%" and inserting "Free" in lieu thereof.

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(63). Subheadings 9027.20.42 (and the immediately preceding text "Electrical:"), 9027.20.44, 9027.90.42, 9027.90.45 (and the immediately preceding text "Other:"), 9027.90.55, 9027.90.60 and 9027.90.80 are superseded and the following inserted, in numerical sequence, in lieu thereof:

	[Instruments and apparatus for physical...:]				
	[Chromatographs and electrophoresis...:]				
"9027.20.50	Electrical.....	Free			40%"
	[Microtomes; parts and accessories:]				
	[Parts and accessories:]				
	[Of electrical instruments and apparatus:]				
"9027.90.45	Printed circuit assemblies for the goods of subheading 9027.80.....	Free			40%
9027.90.54	Other: Of instruments and apparatus of subheading 9027.20, 9027.30, 9027.40, 9027.50 or 9027.80.....	Free			40%
9027.90.58	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)		40%"
	[Other:]				
	"Of optical instruments and apparatus:				
9027.90.64	Of instruments and apparatus of subheading 9027.20, 9027.30, 9027.40, 9027.50 or 9027.80.....	See section A of Annex II to this proclamation	Free (A,E,IL,J, MX) 1% (CA)		50%
9027.90.68	Other.....	See section A of Annex II to this proclamation	Free (A,E,IL,J, MX) 1% (CA)		50%
9027.90.84	Other: Of instruments and apparatus of subheading 9027.20, 9027.30, 9027.40, 9027.50 or 9027.80.....	See section A of Annex II to this proclamation	Free (A,E,IL,J, MX) 0.6% (CA)		40%
9027.90.88	Other.....	See section A of Annex II to this proclamation	Free (A,E,IL,J, MX) 0.6% (CA)		40%"

(64). Subheadings 9030.90.65 and 9030.90.85 are superseded by:

	[Oscilloscopes, spectrum analyzers and...:]				
	[Parts and accessories:]				
	[Other:]				
	"Printed circuit assemblies:				
9030.90.64	Of instruments and apparatus of subheading 9030.82.....	See section A of Annex II to this proclamation	Free (A,B,C,E, IL,J,MX) 0.4% (CA)		40%
9030.90.68	Other.....	See section A of Annex II to this proclamation	Free (A,B,C,E, IL,J,MX) 0.4% (CA)		40%"

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(64). (con.):

	[Oscilloscopes, spectrum analyzers and...:]			
	[Parts and accessories:]			
	[Other:]			
	"Other:			
9030.90.84	Of instruments and apparatus of subheading 9030.82.....	See section A of Annex II to this proclamation	Free (A,B,C,E, IL,J,MX) 0.4% (CA)	40%
9030.90.88	Other.....	See section A of Annex II to this proclamation	Free (A,B,C,E, IL,J,MX) 0.4% (CA)	40%"

(65). Subheadings 9031.49.80, 9031.80.00, 9031.90.55 and 9031.90.60 are superseded and the following inserted, in numerical sequence, in lieu thereof:

	[Measuring or checking instruments,...:]			
	[Other optical instruments and appliances:]			
	[Other:]			
"9031.49.70	For inspecting masks (other than photomasks) used in manufacturing semiconductor devices; for measuring surface particulate contamination on semiconductor devices.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	50%
9031.49.90	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	50%
9031.80.40	Other instruments, appliances and machines: Electron beam microscopes fitted with equipment specifically designed for the handling and transport of semiconductor wafers or reticles.....	See section A of Annex II to this proclamation	Free (A,E,IL,J, MX) 0.4% (CA)	40%
9031.80.80	Other.....	See section A of Annex II to this proclamation	Free (A,B,C,E, IL,J,MX) 0.4% (CA)	40%"
	[Parts and accessories:]			
	[Of other optical instruments...:]			
"9031.90.54	Of optical instruments and appliances of subheading 9031.41 or 9031.49.70.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	50%
9031.90.58	Other.....	See section A of Annex II to this proclamation	Free (A,CA,E,IL, J,MX)	50%
	Other:			
9031.90.70	Of articles of subheading 9031.80.40.....	See section A of Annex II to this proclamation	Free (A,E,IL,J, MX) 0.4% (CA)	40%
9031.90.90	Other.....	See section A of Annex II to this proclamation	Free (A,B,C,E, IL,J,MX) 0.4% (CA)	40%"

(66). Subchapter X to chapter 98 is modified by deleting from subdivision (a)(xiii) of U.S. note 6 to such subchapter "8424.90.90" and inserting "8424.90.80" in lieu thereof.

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Section B. (con.)

(67). Subchapter XVII to chapter 98 is modified:

(a). by deleting from subdivision (u) of U.S. note 2 to such subchapter "8543.89.90," and inserting "8543.89.92, 8543.89.96," in lieu thereof.

(b). by deleting from the article description of heading 9817.84.01 "8479.89.95" and inserting "8479.89.97" in lieu thereof.

(68). Subheading 9902.84.77 is deleted.

(69). The article description of subheadings 9903.41.40 and 9903.41.45 are each modified by deleting "8528.12.88" and inserting "8528.12.96" in lieu thereof.

(70). Subchapter V to chapter 99 is modified:

(a). by deleting subheading 9905.85.62.

(b). by deleting "8536.90.00" from the article descriptions of subheadings 9905.85.68 and 9905.85.71 wherever it appears and inserting "8536.90" in lieu thereof.

(c). by deleting "8536.69.00" from the article descriptions of subheadings 9905.85.71 and 9905.85.79 wherever it appears and inserting "8536.69" in lieu thereof.

(d). by deleting "8544.41.00, 8544.51.80" from the article description of subheading 9905.85.82 and inserting "8544.41, 8544.51.70, 8544.51.90" in lieu thereof.

(e). by deleting "8544.41.00" from the article description of subheading 9905.85.83 and inserting "8544.41" in lieu thereof.

(f). by deleting "9030.90.65 or 9030.90.85" from the article description of subheadings 9905.90.05 and 9905.90.10 and inserting "9030.90.68 or 9030.90.88" in lieu thereof.

(g). by deleting "9027.90.60 or 9027.90.80" from the article description of subheading 9905.90.11 and inserting "9027.90.64, 9027.90.68, 9027.90.84 or 9027.90.88" in lieu thereof.

(h). by deleting "9031.90.60" from the article description of subheading 9905.90.15 and inserting "9031.90.90" in lieu thereof.

(71). Subchapter VII to chapter 99 of the HTS is modified by deleting subheading 9907.84.15.

Section C. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1999.

(1). General note 4(d) is modified by deleting "8524.99.60 Argentina" and "8524.99.90 Argentina".

(2). The tariff classification rules ("TCRs") of subdivision (t) of general note 12 are modified as follows:

(a). TCR 77, 79, 79A, 80(C), 82, 83 and 94 for chapter 85 are each modified by deleting from such rule "8529.90.19, 8529.90.22 or 8529.90.24" and inserting "8529.90.19 or 8529.90.23" in lieu thereof.

(b). TCR 84, 92A, 92B and 92K for chapter 85 are each modified by deleting from such rule "8529.90.22, 8529.90.24" and inserting "8529.90.23" in lieu thereof.

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(2). (con.):

(c). TCR 99 for chapter 85 is modified by deleting from such rule "8529.90.73, 8529.90.74 or 8529.90.77" and inserting "8529.90.73 or 8529.90.76" in lieu thereof.

(d). TCR 100(A) and 100(B) for chapter 85 are each modified by deleting from such rule "8529.90.83, 8529.90.84 or 8529.90.87" and inserting "8529.90.83 or 8529.90.85" in lieu thereof.

(3). The additional U.S. notes to chapter 84 are modified:

(a). by deleting "8479.90.97" from additional U.S. note 1 and inserting "8479.90.95" in lieu thereof.

(b). by deleting ", 8466.30.20 and 8466.30.40" from additional U.S. note 3 and inserting "and 8466.30.45" in lieu thereof.

(4). Subheadings 8421.91.70 and 8421.91.90 are superseded by:

	[Centrifuges, including centrifugal...:]		
	[Parts:]		
	[Of centrifuges, ...:]		
"8421.91.60	Other.....	Free	25%"

(5). Subheadings 8424.30.40, 8424.30.80, 8424.90.60 and 8424.90.80 are superseded and the following inserted, in numerical sequence, in lieu thereof:

	[Mechanical appliances (whether or...:)]		
	[Steam or sand blasting...:]		
"8424.30.90	Other.....	Free	35%"
	[Parts:]		
"8424.90.90	Other.....	Free	35%"

(6). Subheadings 8428.20, 8428.20.40, 8428.20.80, 8428.33, 8428.33.40, 8428.33.80, 8428.39, 8428.39.40, 8428.39.80, 8428.90, 8428.90.40 and 8428.90.80 are superseded and the following inserted, in numerical sequence, in lieu thereof:

	[Other lifting, handling, loading or...:]		
"8428.20.00	Pneumatic elevators and conveyors.....	Free	35%"
	[Other continuous-action elevators...:]		
"8428.33.00	Other, belt type.....	Free	35%
8428.39.00	Other.....	Free	35%
8428.90.00	Other machinery.....	Free	35%"

(7). Subheadings 8431.39, 8431.39.40 and 8431.39.80 are superseded by:

	[Parts suitable for use solely or principally with the machinery of headings 8425 to 8430:]		
	[Of machinery of heading 8428:]		
"8431.39.00	Other.....	Free	35%"

(8). Subheadings 8466.30.20 (and the immediately preceding text "For the machines described in additional U.S. note 3 to chapter 84:"), 8466.30.40, 8466.91.40 (and the immediately preceding text "Other:") and 8466.91.80 are superseded and the following inserted, in numerical sequence, in lieu thereof:

	[Parts and accessories suitable for use...:]		
	[Dividing heads and other special...:]		
	[Other special attachments:]		
"8466.30.45	For the machines described in additional U.S. note 3 to chapter 84.....	Free	45%"
	[Other:]		
	[For machines of headings 8464:]		
"8466.91.50	Other.....	Free	35%"

(9). Subheadings 8479.90.93 and 8479.90.97 are superseded by:

	[Machines and mechanical appliances having...:]		
	[Parts:]		
"8479.90.95	Other.....	Free	35%"

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Section C. (con.)

(10). Subheadings 8514.10, 8514.10.40, 8514.10.80, 8514.20, 8514.20.40, 8514.20.80, 8514.90, 8514.90.40 and 8514.90.80 are superseded and the following inserted, in numerical sequence, in lieu thereof:

[Industrial or laboratory electric...:]			
"8514.10.00	Resistance heated furnaces and ovens.....	Free	35%
8514.20.00	Induction or dielectric furnaces and ovens....	Free	35%
8514.90.00	Parts.....	Free	35%"

(11). Subheadings 8515.80, 8515.80.40 and 8515.80.80 are superseded by:

[Electric (including electrically...:)]			
"8515.80.00	Other machines and apparatus.....	Free	35%"

(12). Subheadings 8524.99.60 (and the immediately preceding text "Other:") and 8524.99.90 are superseded by:

[Records, tapes and other recorded media...:]			
[Other:]			
[Other:]			
"8524.99.40	Other.....	Free	86.1¢/m ² of recording surface"

(13). Subheadings 8525.20.24 (and the immediately preceding text "Low-power radiotelephonic transceivers operating on frequencies from 49.82 to 49.90 MHz:") and 8525.20.28 are superseded by:

[Transmission apparatus for...:]			
[Transceivers:]			
"8525.20.20	Low-power radiotelephonic transceivers operating on frequencies from 49.82 to 49.90 MHz.....	Free	35%"

(14). Subheadings 8529.90.22, 8529.90.24, 8529.90.74, 8529.90.77, 8529.90.84 and 8529.90.87 are superseded and the following inserted, in numerical sequence, in lieu thereof:

[Parts suitable for use solely or...:]			
[Other:]			
[Printed circuit assemblies:]			
"8529.90.23	Other.....	Free	35%"
[Other, parts of printed circuit assemblies, including...:]			
"8529.90.76	Other.....	Free	35%"
[Other parts of articles of headings 8525 and 8527, except...:]			
"8529.90.85	Other.....	Free	35%"

(15). Subchapter X to chapter 98 is modified by deleting from subdivision (a)(xiii) of U.S. note 6 to such subchapter "8424.90.80" and inserting "8424.90.90" in lieu thereof.

Annex II

Staged Rate Modifications to the Harmonized
Tariff Schedule of the United States ("HTS")

Section A. For the following provisions, the Rates of Duty 1-General subcolumn of the Harmonized Tariff Schedule of the United States ("HTS") is modified on the dates set forth in the table below by deleting the existing rate of duty from the enumerated provision and inserting in lieu thereof the rate of duty specified for such date.

HTS Subheading	July 1, 1997	January 1, 1998	January 1, 1999	January 1, 2000
2208.20.10	6.9¢/pf. liter	4.6¢/pf. liter	2.3¢/pf. liter	Free
2208.20.20	47.2¢/pf. liter	31.5¢/pf. liter	15.7¢/pf. liter	Free
2208.20.30	17.4¢/pf. liter	11.5¢/pf. liter	5.7¢/pf. liter	Free
2208.20.40	6.9¢/pf. liter	4.6¢/pf. liter	2.3¢/pf. liter	Free
2208.20.50	6.9¢/pf. liter	4.6¢/pf. liter	2.3¢/pf. liter	Free
2208.20.60	5.5¢/pf. liter	3.7¢/pf. liter	1.9¢/pf. liter	Free
2208.30.30	2.8¢/pf. liter	1.8¢/pf. liter	0.9¢/pf. liter	Free
2208.30.60	3.4¢/pf. liter	2.3¢/pf. liter	1.2¢/pf. liter	Free
2208.40.20	30.4¢/pf. liter	28.1¢/pf. liter	25.9¢/pf. liter	23.7¢/pf. liter
2208.40.40	26.1¢/pf. liter	21.7¢/pf. liter	17.4¢/pf. liter	13¢/pf. liter ^{1/}
2208.40.60	30.4¢/pf. liter	28.1¢/pf. liter	25.9¢/pf. liter	23.7¢/pf. liter
2208.40.80	26.1¢/pf. liter	21.7¢/pf. liter	17.4¢/pf. liter	13¢/pf. liter ^{1/}
2208.50.00	8.1¢/pf. liter	5.4¢/pf. liter	2.7¢/pf. liter	Free
2208.60.10	41.6¢/pf. liter	27.7¢/pf. liter	13.9¢/pf. liter	Free
2208.60.20	8.1¢/pf. liter	5.4¢/pf. liter	2.7¢/pf. liter	Free
2208.60.50	20.3¢/pf. liter	13.6¢/pf. liter	6.8¢/pf. liter	Free
2208.70.00	8.1¢/pf. liter	5.4¢/pf. liter	2.7¢/pf. liter	Free
2208.90.01	6.8¢/pf. liter	4.6¢/pf. liter	2.3¢/pf. liter	Free
2208.90.05	6.2¢/pf. liter	4.1¢/pf. liter	2¢/pf. liter	Free
2208.90.10	8.1¢/pf. liter	5.4¢/pf. liter	2.7¢/pf. liter	Free
2208.90.12	17.3¢/pf. liter	11.6¢/pf. liter	5.8¢/pf. liter	Free
2208.90.14	6.9¢/pf. liter	4.6¢/pf. liter	2.3¢/pf. liter	Free
2208.90.15	6.9¢/pf. liter	4.6¢/pf. liter	2.3¢/pf. liter	Free
2208.90.20	47.2¢/pf. liter	31.4¢/pf. liter	15.7¢/pf. liter	Free
2208.90.25	17.3¢/pf. liter	11.6¢/pf. liter	5.8¢/pf. liter	Free
2208.90.30	6.9¢/pf. liter	4.6¢/pf. liter	2.3¢/pf. liter	Free
2208.90.35	6.9¢/pf. liter	4.6¢/pf. liter	2.3¢/pf. liter	Free
2208.90.40	5.6¢/pf. liter	3.7¢/pf. liter	1.8¢/pf. liter	Free
2208.90.46	8.1¢/pf. liter	5.4¢/pf. liter	2.7¢/pf. liter	Free
2208.90.71	94¢/pf. liter	63¢/pf. liter	31¢/pf. liter	Free
2208.90.75	41.6¢/pf. liter	27.7¢/pf. liter	13.8¢/pf. liter	Free
7017.10.30	3.8%	2.6%	1.3%	Free
7017.10.60	5.1%	4.8%	4.6%	4.6%
7020.00.30	4.2%	2.8%	1.4%	Free
7020.00.60	5.6%	5.3%	5%	5%
8421.19.30	1.7%	1.2%	0.5%	Free
8421.19.90	2.3%	1.8%	1.3%	1.3%
8421.91.70	1%	0.5%	Free	Free
8421.91.90	1.6%	0.8%	Free	Free

^{1/} For subheadings 2208.40.40 and 2208.40.80, the rates of duty after 2000 will be as follows:

On or after January 1, 2001-- 8.7¢/pf. liter;
On or after January 1, 2002-- 4.3¢/pf. liter;
On or after January 1, 2003-- Free.

Annex II (continued)

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Section A. (con.)

HTS Subheading	July 1, 1997	January 1, 1998	January 1, 1999	January 1, 2000
8424.30.40	1%	0.5%	Free	Free
8424.30.80	1.5%	0.7%	Free	Free
8424.89.50	2%	1.3%	0.7%	Free
8424.89.70	2.6%	2.2%	1.8%	1.8%
8424.90.60	1%	0.5%	Free	Free
8424.90.80	1.5%	0.7%	Free	Free
8428.20.40	0.5%	0.3%	Free	Free
8428.20.80	0.8%	0.4%	Free	Free
8428.33.40	0.5%	0.3%	Free	Free
8428.33.80	0.8%	0.4%	Free	Free
8428.39.40	0.5%	0.3%	Free	Free
8428.39.80	0.8%	0.4%	Free	Free
8428.90.40	0.5%	0.3%	Free	Free
8428.90.80	0.8%	0.4%	Free	Free
8431.39.40	0.5%	0.3%	Free	Free
8431.39.80	0.8%	0.4%	Free	Free
8456.10.60	2%	1.3%	0.7%	Free
8456.10.80	2.6%	2.5%	2.4%	2.4%
8456.99.70	1.9%	1.3%	0.6%	Free
8456.99.90	2.5%	2.4%	2.2%	2.2%
8462.21.40	3.3%	2.2%	1.1%	Free
8462.29.40	3.3%	2.2%	1.1%	Free
8464.90.60	1.8%	1.2%	0.6%	Free
8464.90.90	2.4%	2.2%	2%	2%
8465.99.40	2%	1.3%	0.7%	Free
8465.99.80	2.6%	2.5%	2.4%	2.4%
8466.10.40	3.2%	2.2%	1.1%	Free
8466.10.80	4.3%	4.1%	3.9%	3.9%
8466.20.40	3.1%	2.1%	1%	Free
8466.20.80	4.1%	3.9%	3.7%	3.7%
8466.30.20	2.4%	1.6%	0.8%	Free
8466.30.40	6.5%	4.3%	2.2%	Free
8466.30.60	3.2%	3.1%	2.9%	2.9%
8466.30.80	8.6%	8.3%	8%	8%
8466.91.40	1.3%	0.6%	Free	Free
8466.91.80	1.9%	0.9%	Free	Free
8466.93.47	3.5%	2.4%	1.2%	Free
8466.93.85	3.5%	2.4%	1.2%	Free
8466.94.55	3.5%	2.4%	1.2%	Free
8466.94.75	3.5%	2.4%	1.2%	Free
8469.11.00	0.6%	0.3%	Free	Free
8470.21.00	2%	1.3%	0.7%	Free
8470.29.00	2%	1.3%	0.7%	Free
8470.30.00	2%	1.3%	0.7%	Free
8471.10.00	2.6%	1.7%	0.9%	Free
8471.30.00	2%	1.4%	0.7%	Free
8471.41.00	2%	1.4%	0.7%	Free
8471.49.26	1%	0.5%	Free	Free
8471.49.29	1%	0.5%	Free	Free
8471.49.32	1%	0.5%	Free	Free
8471.49.34	1%	0.5%	Free	Free
8471.49.42	1%	0.5%	Free	Free
8471.60.35	1%	0.5%	Free	Free
8471.60.45	1%	0.5%	Free	Free
8471.60.52	1%	0.5%	Free	Free
8471.60.54	1%	0.5%	Free	Free
8471.60.80	1%	0.5%	Free	Free
8472.90.95	2.6%	2.2%	1.8%	1.8%
8473.10.20	2.1%	1.4%	0.7%	Free

Annex II (continued)

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Section A. (con.)

HTS Subheading	July 1, 1997	January 1, 1998	January 1, 1999	January 1, 2000
8473.10.40	2.8%	2.4%	2%	2%
8473.40.10	2%	1.4%	0.7%	Free
8473.40.95	2.7%	2.3%	1.9%	1.9%
8477.10.70	2.6%	1.7%	0.9%	Free
8477.10.90	3.4%	3.3%	3.1%	3.1%
8477.40.40	2.6%	1.7%	0.9%	Free
8477.40.80	3.4%	3.3%	3.1%	3.1%
8477.59.40	2.6%	1.7%	0.9%	Free
8477.59.80	3.4%	3.3%	3.1%	3.1%
8477.90.15	2.6%	1.7%	0.9%	Free
8477.90.25	3.4%	3.3%	3.1%	3.1%
8477.90.35	2.6%	1.7%	0.9%	Free
8477.90.45	3.4%	3.3%	3.1%	3.1%
8477.90.55	2.6%	1.7%	0.9%	Free
8477.90.65	3.4%	3.3%	3.1%	3.1%
8477.90.75	2.6%	1.7%	0.9%	Free
8477.90.85	3.4%	3.3%	3.1%	3.1%
8479.89.87	2.3%	1.5%	0.8%	Free
8479.89.97	3%	2.7%	2.5%	2.5%
8479.90.93	1%	0.5%	Free	Free
8479.90.97	1.5%	0.7%	Free	Free
8480.71.40	2.6%	1.7%	0.9%	Free
8480.71.80	3.4%	3.3%	3.1%	3.1%
8504.40.95	2.1%	1.8%	1.5%	1.5%
8504.50.40	2.3%	1.5%	0.8%	Free
8504.90.65	2.1%	1.4%	0.7%	Free
8504.90.75	2.8%	2.6%	2.5%	2.4%
8514.10.40	0.7%	0.3%	Free	Free
8514.10.80	1%	0.5%	Free	Free
8514.20.40	0.7%	0.3%	Free	Free
8514.20.80	1%	0.5%	Free	Free
8514.30.60	1.3%	0.9%	0.5%	Free
8514.30.80	1.8%	1.5%	1.3%	1.3%
8514.90.40	0.7%	0.3%	Free	Free
8514.90.80	1%	0.5%	Free	Free
8515.80.40	0.5%	0.3%	Free	Free
8515.80.80	0.8%	0.4%	Free	Free
8515.90.10	1.3%	0.9%	0.5%	Free
8515.90.30	1.8%	1.7%	1.6%	1.6%
8517.11.00	1.6%	0.8%	Free	Free
8517.19.40	6.4%	4.3%	2.1%	Free
8517.19.80	6.4%	4.3%	2.1%	Free
8517.21.00	3.5%	2.4%	1.2%	Free
8517.22.00	3.5%	2.4%	1.2%	Free
8517.30.15	6.4%	4.3%	2.1%	Free
8517.30.20	6.4%	4.3%	2.1%	Free
8517.30.25	6.4%	4.3%	2.1%	Free
8517.30.30	6.4%	4.3%	2.1%	Free
8517.30.50	2.5%	1.7%	0.8%	Free
8517.50.10	2.5%	1.7%	0.8%	Free
8517.50.50	6.4%	4.3%	2.1%	Free
8517.50.60	2.5%	1.7%	0.8%	Free
8517.50.90	3.5%	2.4%	1.2%	Free
8517.80.10	6.4%	4.3%	2.1%	Free
8517.80.20	3.5%	2.4%	1.2%	Free
8517.90.04	3.5%	2.4%	1.2%	Free
8517.90.08	3.5%	2.4%	1.2%	Free
8517.90.12	6.4%	4.3%	2.1%	Free
8517.90.16	3.5%	2.4%	1.2%	Free

Annex II (continued)

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Section A. (con.)

HTS Subheading	July 1, 1997	January 1, 1998	January 1, 1999	January 1, 2000
8517.90.24	6.4%	4.3%	2.1%	Free
8517.90.26	3.5%	2.4%	1.2%	Free
8517.90.32	6.4%	4.3%	2.1%	Free
8517.90.34	3.5%	2.4%	1.2%	Free
8517.90.36	6.4%	4.3%	2.1%	Free
8517.90.38	6.4%	4.3%	2.1%	Free
8517.90.44	3.5%	2.4%	1.2%	Free
8517.90.48	6.4%	4.3%	2.1%	Free
8517.90.52	6.4%	4.3%	2.1%	Free
8517.90.56	3.5%	2.4%	1.2%	Free
8517.90.58	6.4%	4.3%	2.1%	Free
8517.90.64	6.4%	4.3%	2.1%	Free
8517.90.66	3.5%	2.4%	1.2%	Free
8518.10.40	3.7%	2.5%	1.2%	Free
8518.29.40	3.7%	2.5%	1.2%	Free
8518.30.10	6.4%	4.3%	2.1%	Free
8518.40.10	6.4%	4.3%	2.1%	Free
8518.90.20	6.4%	4.3%	2.1%	Free
8518.90.60	3.7%	2.5%	1.2%	Free
8520.20.00	1.1%	0.5%	Free	Free
8522.90.45	2.1%	1.4%	0.7%	Free
8523.11.00	1.1%	0.6%	Free	Free
8523.20.00	1.1%	0.6%	Free	Free
8523.90.00	1.1%	0.6%	Free	Free
8524.31.00	2.6¢/m ² of recording surface	1.3¢/m ² of recording surface	Free	Free
8524.39.40	2.8%	1.9%	0.9%	Free
8524.39.80	3.7%	3.2%	2.7%	2.7%
8524.40.00	5.1¢/m ² of recording surface	3.4¢/m ² of recording surface	1.7¢/m ² of recording surface	Free
8524.91.00	2.6¢/m ² of recording surface	1.3¢/m ² of recording surface	Free	Free
8524.99.60	2.6¢/m ² of recording surface	1.3¢/m ² of recording surface	Free	Free
8524.99.90	3.9¢/m ² of recording surface	1.9¢/m ² of recording surface	Free	Free
8525.10.10	2%	1.3%	0.7%	Free
8525.10.30	2.6%	2.2%	1.8%	1.8%
8525.10.70	4.2%	3.6%	3%	3%
8525.10.90	3.2%	2.1%	1.1%	Free
8525.20.05	3.2%	2.1%	1.1%	Free
8525.20.15	3.2%	2.1%	1.1%	Free
8525.20.28	1.1%	0.6%	Free	Free
8525.20.30	3.2%	2.1%	1.1%	Free
8525.40.40	2.2%	1.5%	0.7%	Free
8525.40.80	2.9%	2.5%	2.1%	2.1%
8527.90.85	4.5%	3%	1.5%	Free
8528.12.92	3.8%	2.5%	1.3%	Free
8529.10.70	3.2%	2.1%	1.1%	Free
8529.10.90	4.2%	3.6%	3%	3%
8529.90.24	2.4%	1.2%	Free	Free
8529.90.74	1.6%	0.8%	Free	Free
8529.90.77	2.4%	1.2%	Free	Free
8529.90.87	2.4%	1.2%	Free	Free

Annex II (continued)

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Section A. (con.)

HTS Subheading	July 1, 1997	January 1, 1998	January 1, 1999	January 1, 2000
8529.90.88	4.4%	4.2%	4%	4%
8531.20.00	1.4%	1%	0.5%	Free
8531.80.40	0.7%	0.4%	Free	Free
8531.80.70	1.4%	1%	0.5%	Free
8531.80.90	1.9%	1.6%	1.3%	1.3%
8531.90.10	1.4%	1%	0.5%	Free
8531.90.30	1.9%	1.6%	1.3%	1.3%
8531.90.90	1.9%	1.6%	1.3%	1.3%
8532.10.00	7.1%	4.7%	2.4%	Free
8532.21.00	7.1%	4.7%	2.4%	Free
8532.22.00	7.1%	4.7%	2.4%	Free
8532.23.00	7.1%	4.7%	2.4%	Free
8532.24.00	7.1%	4.7%	2.4%	Free
8532.25.00	7.1%	4.7%	2.4%	Free
8532.29.00	7.1%	4.7%	2.4%	Free
8532.30.00	7.1%	4.7%	2.4%	Free
8532.90.00	2.8%	1.8%	0.9%	Free
8533.10.00	4.5%	3%	1.5%	Free
8533.21.00	4.5%	3%	1.5%	Free
8533.29.00	3.2%	2.1%	1.1%	Free
8533.31.00	4.5%	3%	1.5%	Free
8533.39.00	3.2%	2.1%	1.1%	Free
8533.40.80	4%	2.7%	1.3%	Free
8533.90.40	4.5%	3%	1.5%	Free
8533.90.80	4.5%	3%	1.5%	Free
8534.00.00	2.8%	1.9%	0.9%	Free
8536.50.70	2.8%	1.9%	0.9%	Free
8536.50.90	3.7%	3.2%	2.7%	2.7%
8536.69.40	2.8%	1.9%	0.9%	Free
8536.69.80	3.7%	3.2%	2.7%	2.7%
8536.90.40	2.8%	1.9%	0.9%	Free
8536.90.80	3.7%	3.2%	2.7%	2.7%
8538.90.10	3.2%	2.1%	1.1%	Free
8538.90.30	4.2%	3.9%	3.5%	3.5%
8541.40.20	0.5%	0.3%	Free	Free
8543.81.00	2.3%	1.6%	0.8%	Free
8543.89.92	2.3%	1.6%	0.8%	Free
8543.89.96	3.1%	2.9%	2.6%	2.6%
8543.90.64	2.3%	1.6%	0.8%	Free
8543.90.68	3.1%	2.9%	2.6%	2.6%
8543.90.84	2.3%	1.6%	0.8%	Free
8543.90.88	3.1%	2.9%	2.6%	2.6%
8544.41.40	2.8%	1.9%	0.9%	Free
8544.41.80	3.7%	3.1%	2.6%	2.6%
8544.49.40	3.2%	2.1%	1.1%	Free
8544.49.80	4.2%	3.9%	3.5%	3.5%
8544.51.40	2.8%	1.9%	0.9%	Free
8544.51.70	2.8%	1.9%	0.9%	Free
8544.51.90	3.7%	3.1%	2.6%	2.6%
8544.70.00	6.3%	4.2%	2.1%	Free
9009.11.00	2%	1.3%	0.7%	Free
9009.21.00	2%	1.3%	0.7%	Free
9010.90.70	3%	2%	1%	Free
9010.90.90	4%	3.5%	2.9%	2.9%
9013.80.70	4.7%	3.2%	1.6%	Free
9013.80.90	6.3%	5.4%	4.5%	4.5%
9013.90.50	4.7%	3.2%	1.6%	Free
9013.90.90	6.3%	5.4%	4.5%	4.5%
9017.10.40	3.2%	2.2%	1.1%	Free

Annex II (continued)

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Section A. (con.)

HTS Subheading	July 1, 1997	January 1, 1998	January 1, 1999	January 1, 2000
9017.10.80	4.3%	4.1%	3.9%	3.9%
9017.20.70	3.8%	2.6%	1.3%	Free
9017.20.80	5.1%	4.8%	4.6%	4.6%
9026.10.40	22¢ each + 3.5%	15¢ each + 2.4%	8¢ each + 1.2%	Free
9026.80.40	22¢ each + 3.4%	15¢ each + 2.3%	7.5¢ each + 1.2%	Free
9026.90.20	2.3%	1.5%	0.8%	Free
9026.90.40	4.1%	2.8%	1.4%	Free
9027.20.80	2.9%	1.9%	1%	Free
9027.30.80	4.6%	3.1%	1.5%	Free
9027.50.80	4.6%	3.1%	1.5%	Free
9027.80.80	2.9%	1.9%	1%	Free
9027.90.58	3%	2.3%	1.7%	1.7%
9027.90.64	4.6%	3.1%	1.5%	Free
9027.90.68	6.1%	4.8%	3.5%	3.5%
9027.90.84	2.9%	1.9%	1%	Free
9027.90.88	3.8%	3%	2.2%	2.2%
9030.90.64	2.3%	1.5%	0.8%	Free
9030.90.68	3%	2.3%	1.7%	1.7%
9030.90.84	2.3%	1.5%	0.8%	Free
9030.90.88	3%	2.3%	1.7%	1.7%
9031.49.70	4.6%	3.1%	1.5%	Free
9031.49.90	6.1%	4.8%	3.5%	3.5%
9031.80.40	2.3%	1.5%	0.8%	Free
9031.80.80	3%	2.3%	1.7%	1.7%
9031.90.54	4.6%	3.1%	1.5%	Free
9031.90.58	6.1%	4.8%	3.5%	3.5%
9031.90.70	2.3%	1.5%	0.8%	Free
9031.90.90	3%	2.3%	1.7%	1.7%

Section B. For subheadings 8518.90.40, the Rates of Duty 1-General subcolumn is modified (i) by deleting the rate of duty in such subcolumn and inserting the rate of duty specified for such subheading in the first column in the table below in lieu thereof, and (ii) for each of the subsequent columns the rate of duty in the Rates of Duty 1-General subcolumn is deleted and the following rates of duty are inserted in such subheading in lieu thereof on the dates announced for each column in this table by the United States Trade Representative in the Federal Register, at any time after the United States Trade Representative has determined that other major countries provide adequate entity coverage under the Agreement on Government Procurement, entered into on April 15, 1994, or under another binding international agreement.

HTS Subheadings	<u>Stage 1</u>	<u>Stage 2</u>	<u>Stage 3</u>	<u>Stage 4</u>	<u>Stage 5</u>
8518.90.40	7.7%	6.8%	6%	5.1%	4.3%

Annex II (continued)

Section C. For the following subheadings, the Rates of Duty 1-Special subcolumn is modified on January 1, 1998, by deleting the rate of duty and the "(CA)" following such rate and inserting "CA", in alphabetical sequence, in the parentheses following the "Free" rate of duty in such subcolumn.

7017.10.30	8524.99.90	8544.49.40	9027.90.68
7017.10.60	8528.12.92	8544.49.80	9027.90.84
7020.00.30	8528.12.96	8544.51.70	9027.90.88
7020.00.60	8536.50.70	8544.51.90	9030.90.64
8504.50.40	8536.50.90	9013.80.70	9030.90.68
8504.50.80	8536.69.40	9013.80.90	9030.90.84
8518.10.40	8536.69.80	9013.90.50	9030.90.88
8518.10.80	8536.90.40	9013.90.90	9031.80.40
8518.29.40	8536.90.80	9017.10.40	9031.80.80
8518.29.80	8538.90.10	9017.10.80	9031.90.70
8524.39.40	8538.90.30	9017.20.70	9031.90.90
8524.39.80	8544.41.40	9017.20.80	
8524.99.60	8544.41.80	9027.90.64	

Section D. For subheadings 8428.90.40 and 8428.90.80, the Rates of Duty 1-Special subcolumn is modified on January 1, 1998, by deleting the rate of duty and the "(MX)" following such rate and inserting "MX", in alphabetical sequence, in the parentheses following the "Free" rate of duty in such subcolumn.

Section E. For the following subheadings, the Rates of Duty 1-Special subcolumn is modified on January 1 of each of the dates in the table below by deleting the existing rate of duty preceding the symbol "MX" in parentheses in such subcolumn and inserting in lieu thereof the rate of duty specified below for such date.

HTS Subheading	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
2208.40.20	18.5¢/pf. liter	14.8¢/pf. liter	11.1¢/pf. liter	7.4¢/pf. liter	3.7¢/pf. liter	Free
2208.40.40	18.5¢/pf. liter	14.8¢/pf. liter	11.1¢/pf. liter	7.4¢/pf. liter	3.7¢/pf. liter	Free
2208.40.60	18.5¢/pf. liter	14.8¢/pf. liter	11.1¢/pf. liter	7.4¢/pf. liter	3.7¢/pf. liter	Free
2208.40.80	18.5¢/pf. liter	14.8¢/pf. liter	11.1¢/pf. liter	7.4¢/pf. liter	3.7¢/pf. liter	Free
8544.51.70	2.6%	2.1%	1.5%	1%	0.5%	Free
8544.51.90	2.6%	2.1%	1.5%	1%	0.5%	Free

Presidential Documents

Executive Order 13053 of June 30, 1997

Adding Members to and Extending the President's Council on Sustainable Development

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to amend Executive Order 12852 for various purposes, it is hereby ordered that Executive Order 12852, as amended, is further amended by deleting the number "29" from section 1 and inserting the number "35" in lieu thereof; by deleting from section 3(d) and 4(a) the text "Department of the Interior" and inserting in lieu thereof the following text: "Department of Energy"; and by deleting from section 4(b) the text "June 29, 1997" and inserting in lieu thereof the following text: "February 28, 1999."



THE WHITE HOUSE,
June 30, 1997.

[FR Doc. 97-17566
Filed 7-1-97; 11:08 am]
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Federal Register

Vol. 62, No. 127

Wednesday, July 2, 1997

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