8–22–97
Vol. 62 No. 163
Pages 44535–44880

# federal register

Friday
August 22, 1997

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 338

**RIN 3206–AH85**

### Qualification Requirements (General)

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations concerning the use of qualification standards. The regulations clarify the use of OPM's Operating Manual: Qualification Standards for General Schedule Positions when considering experience in making competitive service appointments.

**EFFECTIVE DATE:** September 22, 1997.

**FOR FURTHER INFORMATION CONTACT:** Christina Gonzales Vay, 202–606–0830, FAX 202–606–2329, or TDD 202–606–0023.

**SUPPLEMENTARY INFORMATION:** Section 17 of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65, December, 19, 1995) requires OPM to promulgate requlations concerning the consideration of experience of applicants who are being considered for competitive service positions. On June 5, 1997 (62 FR 30778), we proposed regulations to place a statement in part 338 to clarify that experience is considered as outlined in OPM's Operating Manual: Qualification Standards for General Schedule Positions. We also indicated that the Operating Manual is available to the public for review at agency personnel offices and Federal depository libraries, and for purchase from the Government Printing Office. We received no comments on the proposed regulations and are adopting them as final regulations with no change.

**Regulatory Flexibility Act**

I certify that this regulation will have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

**List of Subjects in 5 CFR Part 338**

Government employees.

U.S. Office of Personnel Management.

**James B. King,**

*Director.*

Accordingly, OPM is amending part 338 of title 5, Code of Federal Regulations, as follows:

### PART 338—QUALIFICATION STANDARDS (GENERAL)

1.The authority citation for part 338 is revised to read as follows:

**Authority:** 5 U.S.C. 3301, 3302, 3304; E.O. 10577, 3 CFR, 1954–1958 comp., p. 218.

2. Subpart C consisting of § 338.301, is added to read as follows:

### Subpart C—Consideration for Appointment

**§ 338.301 Competitive service appointment.**

Agencies must ensure that employees who are given competitive service appointments meet the requirements included in the Office of Personnel Management's Operating Manual: Qualification Standards for General Schedule Positions. The Operating Manual is available to the public for review at agency personnel offices and Federal depository libraries, and for purchase from the Government Printing Office.

[FR Doc. 97–22005 Filed 8–21–97; 8:45 am]

BILLING CODE 6325–01–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 96–CE–23–AD; Amendment 39–10109; AD 97–17–07]**

**RIN 2120–AA64**

### Airworthiness Directives; Aviat Aircraft, Inc. Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B Airplanes (Formerly Known as Pitts Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B Airplanes)

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment revises AD 96–12–03, which applies to Aviat Aircraft, Inc. (Aviat) Models S–1S, S–1T, S–2, S–2S, and S–2B airplanes that are equipped with aft lower fuselage wing attach fittings incorporating either part number (P/N) 76090, 2–2107–1, or 1–210–102. That AD currently requires repetitively inspecting the aft lower fuselage wing attach fitting on both wings for cracks, and modifying any cracked aft lower fuselage wing attach fitting. Modifying both aft lower fuselage wing attach fittings eliminates the repetitive inspection requirement of AD 96–12–03. Aviat recently started incorporating modified aft lower fuselage wing attach fittings on newly manufactured airplanes. This AD retains the requirements of AD 96–12–03, but exempts airplanes that had the modified aft lower fuselage wing attach fittings incorporated at manufacture. The actions specified by this AD are intended to prevent possible in-flight separation of the wing from the airplane caused by a cracked fuselage wing attach fitting.

**DATES:** Effective October 3, 1997.

The incorporation by reference of Aviat Service Bulletin No. 25, dated April 3, 1996, Revised November 12, 1996, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of October 3, 1997.

The incorporation by reference of Aviat Service Bulletin No. 25, dated April 3, 1996, was previously approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of June 6, 1996 (61 FR 28730).

**ADDRESSES:** Service information that applies to this AD may be obtained from Aviat Aircraft, Inc., P.O. Box 1240 (postal service delivery), 672 South Washington Street (express mail), Afton, Wyoming 83110. 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–23–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. Roger Caldwell, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 26805 E. 68th Avenue, Room 214, Denver, Colorado 80249; telephone (303) 342–1086; facsimile (303) 342–1088.

**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 Aviat Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 6, 1997 (62 FR 102360). The NPRM proposed to revise AD 96–12–03 by retaining the requirements of that AD for airplanes that do not have aft lower fuselage wing attach fittings, either P/N 76090, 2–2107–1, or 1–210–102, incorporated at manufacture. These aft lower fuselage wing attach fittings were incorporated at manufacture on the Model S–2B airplanes beginning with serial number 5349. AD 96–12–03 applied to all serial numbers of the Model S–2B airplanes. Accomplishment of the proposed AD as specified in the NPRM would be in accordance with Aviat SB No. 25, dated April 3, 1996, Revised November 12, 1996.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed AD 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 AD 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.

## Cost Impact

The FAA estimates that 500 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 2 workhours per airplane to accomplish the initial inspection, and that the average labor rate is approximately $60 an hour. Parts to accomplish the inspections cost approximately $100 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $110,000. These figures do not take into account the cost of repetitive inspections. The FAA has no way of determining how many repetitive inspections each owner/operator may incur over the life of each airplane.

In addition, AD 96–12–03 currently requires the same inspections as this AD for all 500 of the affected airplanes. The only difference is that newly manufactured airplanes are exempt from the actions because they have modified aft lower fuselage wing attach fittings incorporated at manufacture. Therefore, the cost impact of this AD for operators of all affected airplanes is the same as AD 96–12–03.

## 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) 96–12–03, Amendment 39–9645 (61 FR 28730, June 6, 1996), and by adding a new AD to read as follows:

**97–17–07 Aviat Aircraft, Inc.:** Amendment 39–10109; Docket No. 96–CE–23–AD.

*Applicability:* The following airplane models and serial numbers, certificated in any category, that are equipped with aft lower fuselage wing attach fittings incorporating part number (P/N) 76090, 2–2107–1, or 1–210–102, and where these aft lower fuselage wing attach fittings on both wings have not been modified in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Aviat Service Bulletin (SB) No. 25, dated April 3, 1996, Revised November 12, 1996; or Aviat SB No. 25, dated April 3, 1996:

—Models S–1S, S–1T, S–2, S–2A, and S–2S airplanes, all serial numbers.

—Model S–2B airplanes, serial numbers 5000 through 5348.

**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 as indicated in the body of this AD.

To prevent possible in-flight separation of the wing from the airplane caused by a cracked aft lower fuselage wing attach fitting, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 96–12–03), and thereafter at intervals not to exceed 50 hours TIS, inspect the aft lower fuselage wing attach fitting on both wings for cracks. Accomplish these inspections in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Aviat SB No. 25,

dated April 3, 1996, Revised November 12, 1996; or Aviat SB No. 25, dated April 3, 1996.

(b) If any cracked aft lower fuselage wing attach fitting is found during any inspection required by this AD, prior to further flight, modify the cracked aft lower fuselage wing attach fitting in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Aviat SB No. 25, dated April 3, 1996, Revised November 12, 1996; or Aviat SB No. 25, dated April 3, 1996. Repetitive inspections are no longer necessary on an aft lower fuselage wing attachment fitting that was found cracked and has the referenced modification incorporated.

(c) Modifying the aft lower fuselage wing attach fitting on both wings in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Aviat SB No. 25, dated April 3, 1996, Revised November 12, 1996; or Aviat SB No. 25, dated April 3, 1996, is considered terminating action for the repetitive inspection requirement of this AD.

(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 initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Denver Aircraft Certification Office, 26805 E. 68th Avenue, Room 214, Denver, Colorado 80249. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Denver ACO. Alternative methods of compliance approved in accordance with AD 96–12–03 are considered approved for this AD.

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

(f) The inspections and modification required by this AD shall be done in accordance with Aviat Service Bulletin No. 25, dated April 3, 1996, Revised November 12, 1996; or Aviat Service Bulletin No. 25, dated April 3, 1996.

(1) The incorporation by reference of Aviat Service Bulletin No. 25, dated April 3, 1996, Revised November 12, 1996, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Aviat Service Bulletin No. 25, dated April 3, 1996, was previously approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of June 6, 1996 (61 FR 28730).

(3) Copies of these service bulletins may be obtained from Aviat Aircraft, Inc., P.O. Box 1240 (postal service delivery), 672 South Washington Street (express mail), Afton, Wyoming 83110. 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.

(g) This amendment (39–10109) revises AD 96–12–03, Amendment 39–9645.

(h) This amendment (39–10109) becomes effective on October 3, 1997.

Issued in Kansas City, Missouri, on August 13, 1997.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–22046 Filed 8–21–97; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 28993; Amdt. No. 1814]**

**RIN 2120–AA65**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

*For Examination*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

### The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR

part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

## Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are neccessary 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. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on August 8, 1997.

**Thomas E. Stuckey,**

*Acting Director, Flight Standards Service.*

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

**Authority:** 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

### §§ 97.23, 97.25, 97.27, 97.29, 97.31, and 97.33 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * Effective Upon Publication

| FDC date | State | City | Airport | FDC No. | SIAP |
|---|---|---|---|---|---|
| 07/24/97 | IA | Boone | Boone Muni | FDC 7/4845 | NDB Rwy 14, Amdt 9... |
| 07/24/97 | KS | Lyons | Lyons-Rice County Muni | FDC 7/4839 | NDB or GPS Rwy 17R, Amdt 5... |
| 07/24/97 | KS | Lyons | Lyons-Rice County Muni | FDC 7/4840 | VOR/DME or GPS–A, Amdt 2... |
| 07/24/97 | KS | Smith Center | Smith Center Muni | FDC 7/4841 | VOR/DME or GPS–A, Amdt 1... |
| 07/24/97 | OH | Marysville | Union County | FDC 7/4848 | NDB Rwy 27, Amdt 5. Delete note... |
| 07/24/97 | OH | Marysville | Union County | FDC 7/4849 | GPS Rwy 27, Orig. Delete note... |
| 07/24/97 | OH | Marysville | Union County | FDC 7/4850 | GPS Rwy 9, Orig. Delete note... |
| 07/25/97 | IL | Peoria | Greater Peoria Regional | FDC 7/4885 | Radar–1, Amdt 12A... |
| 07/25/97 | SC | Hartsville | Hartsville Muni | FDC 7/4879 | NDB or GPS Rwy 21, Amdt 3A... |
| 07/28/97 | IL | Peoria | Greater Peoria Regional | FDC 7/4929 | VOR/DME or TACAN Rwy 31, Amdt 8... |
| 07/28/97 | IL | Peoria | Greater Peoria Regional | FDC 7/4934 | ILS Rwy 31, Amdt 5... |
| 07/28/97 | IL | Peoria | Greater Peoria Regional | FDC 7/4938 | VOR or TACAN or GPS Rwy 13, Amdt 23... |
| 07/28/97 | IN | Indianapolis | Eagle Creek Airpark | FDC 7/4950 | LOC Rwy 21, Amdt 3... |
| 07/28/97 | IN | Indianapolis | Eagle Creek Airpark | FDC 7/4951 | NDB or GPS Rwy 21, Amdt 3... |
| 07/28/97 | IN | Indianapolis | Eagle Creek Airpark | FDC 7/4954 | VOR or GPS–A, Amdt 6... |
| 07/29/97 | AK | Bethel | Bethel | FDC 7/4974 | VOR/DME Rwy 36, Orig... |
| 07/29/97 | AK | Bethel | Bethel | FDC 7/4976 | VOR or GPS Rwy 18, Amdt 8A... |
| 07/29/97 | AK | Bethel | Bethel | FDC 7/4977 | NDB Rwy 18, Amdt 8A... |
| 07/29/97 | MD | Cumberland | Greater Cumberland Regional | FDC 7/4960 | LOC/DME Rwy 23, Amdt 5A... |
| 07/30/97 | AK | Bethel | Bethel | FDC 7/4984 | VOR or GPS Rwy 36, Amdt 7... |
| 07/30/97 | CO | Telluride | Telluride Regional | FDC 7/5017 | LOC/DME Rwy 9, Orig... |
| 07/30/97 | GA | Dublin | W.H. 'Bud' Barron | FDC 7/4998 | VOR or GPS–A, Amdt 3A... |
| 07/30/97 | GA | Marietta | Cobb County—McCollum Field | FDC 7/4991 | ILS Rwy 27, Orig. A... |
| 07/30/97 | MI | Marquette | Marquette County | FDC 7/4986 | LOC BC Rwy 26, Amdt 9... |
| 07/31/97 | CT | New Haven | Tweed-New Haven | FDC 7/5049 | ILS Rwy 2, Amdt 15A... |
| 07/31/97 | CT | New Haven | Tweed-New Haven | FDC 7/5050 | VOR or GPS Rwy 2, Amdt 22A... |
| 07/31/97 | VA | Petersburg | Petersburg | FDC 7/5037 | LOC Rwy 5, Orig. A... |
| 08/01/97 | GA | Jekyll Island | Jekyll Island | FDC 7/5067 | VOR or GPS–A, Amdt 9... |

| FDC date | State | City | Airport | FDC No. | SIAP |
|---|---|---|---|---|---|
| 08/01/97 | GA | Jekyll Island | Jekyll Island | FDC 7/5069 | GPS Rwy 36, Orig... |
| 08/01/97 | NC | Salisbury | Rowan County | FDC 7/5079 | VOR or GPS Rwy 20, Amdt 1... |
| 08/01/97 | SC | Rock Hill | Rock Hill/York County/Bryant Field | FDC 7/5074 | VOR/DME RNAV Rwy 2, Amdt 4B... |
| 08/01/97 | SC | Rock Hill | Rock Hill/York County/Bryant Field | FDC 7/5075 | GPS Rwy 20, Orig... |
| 08/01/97 | SC | Rock Hill | Rock Hill/York County/Bryant Field | FDC 7/5076 | VOR/DME or GPS–B, Amdt 5... |
| 08/01/97 | SC | Rock Hill | Rock Hill/York County/Bryant Field | FDC 7/5077 | GPS Rwy 2, Orig... |
| 08/01/97 | SC | Rock Hill | Rock Hill/York County/Bryant Field | FDC 7/5078 | VOR or GPS–A, Amdt 9... |
| 08/01/97 | TX | San Antonio | San Antonio Intl | FDC 7/5082 | ILS Rwy 3, Amdt 17... |
| 08/01/97 | TX | San Antonio | San Antonio Intl | FDC 7/5084 | NDB or GPS Rwy 3, Amdt 37A... |
| 08/04/97 | DC | Washington | Washington Dulles Intl | FDC 7/5152 | Converging ILS Rwy 12, Amdt 3... |
| 08/04/97 | DC | Washington | Washington Dulles Intl | FDC 7/5153 | Converging ILS Rwy 19L, Amdt 4... |
| 08/04/97 | DC | Washington | Washington Dulles Intl | FDC 7/5154 | ILS Rwy 19L, Amdt 10... |
| 08/04/97 | DC | Washington | Washington Dulles Intl | FDC 7/5155 | Converging ILS Rwy 19R, Amdt 4... |
| 08/04/97 | DC | Washington | Washington Dulles Intl | FDC 7/5156 | ILS Rwy 19R, Amdt 21A... |
| 08/04/97 | DC | Washington | Washington National | FDC 7/5157 | RNAV or GPS Rwy 33, Amdt 5... |
| 08/06/97 | FL | Lake City | Lake City Muni | FDC 7/5186 | GPS Rwy 10, Orig... |
| 08/06/97 | OH | Batavia | Clermont County | FDC 7/5215 | NDB or GPS Rwy 22, Orig... |
| 08/06/97 | OH | Batavia | Clermont County | FDC 7/5216 | GPS Rwy 4, Orig... |

[FR Doc. 97–22356 Filed 8–21–97; 8:45 am]
BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 97

**[Docket No. 28994; Amdt. No. 1815]**

**RIN 2120–AA65**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

### For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

### For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

### By Subscription

Copies of all SIAP's, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable SIAP's will be altered to include ''or GPS'' in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove ''or GPS'' from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as ''RNAV'' will be redesignated as ''VOR/DME RNAV'' without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on August 8, 1997.

**Thomas E. Stuckey,**

*Acting Director, Flight Standards Service.*

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

**§§ 97.23, 97.27, 97.33 and 97.35 [Amended]**

* * * *Effective Sept. 11, 1997*

Upland, CA, Cable, VOR or GPS RWY 6, Amdt 7 Cancelled
Upland, CA, Cable, VOR RWY 6, Amdt 7
Lamar, CO, Lamar Muni, VOR or GPS RWY 18, Amdt 9 Cancelled
Lamar, CO, Lamar Muni, VOR RWY 18, Amdt 9
Monte Vista, CO, Monte Vista Muni, NDB or GPS RWY 20, Orig. Cancelled
Monte Vista, CO, Monte Vista Muni, NDB GPS RWY 20, Orig
Montrose, CO, Montrose Regional VOR/DME or GPS RWY 13, Amdt 8A Cancelled
Montrose, CO, Montrose Regional VOR/DME RWY 13, Amdt 8A
Plant City, FL, Plant City Muni, NDB or GPS RWY 9, Orig Cancelled
Plant City, FL, Plant City Muni, NDB RWY 9, Orig
Weno Island, FM, Chuck Intl, NDB/DME or GPS RWY 4, Orig–A Cancelled
Weno Island, FM, Chuck Intl, NDB/DME RWY 4, Orig–A
Caldwell, ID, Caldwell Industrial, NDB or GPS RWY 30, Amdt 3A Cancelled
Caldwell, ID, Caldwell Industrial, NDB RWY 30, Amdt 3A
Carmi, IL, Carni Muni, NDB or GPS RWY 36, Amdt 5 Cancelled
Carmi, IL, Carni Muni, NDB RWY 36, Amdt 5
Beverly, MA, Beverly Muni, VOR or GPS RWY 16, Amdt 4 Cancelled
Beverly, MA, Beverly Muni, VOR RWY 16, Amdt 4
Marshall, MN, Marshall Muni-Ryan Field, VOR/DME or GPS RWY 30, Amdt 2 Cancelled
Marshall, MN, Marshall Muni-Ryan Field, VOR/DME RWY 30, Amdt 2
Keene, NH, Dillant-Hopkins, VOR or GPS RWY 2, Amdt 11 Cancelled
Keene, NH, Dillant-Hopkins, VOR RWY 2, Amdt 12
Montgomery, NY, Orange County, NDB or GPS RWY 3, Amdt 2 Cancelled
Montgomery, NY, Orange County, NDB RWY 3, Amdt 2
Ogden, UT, Ogden-Hinskley, VOR or GPS RWY 7, Amdt 5 Cancelled
Ogden, UT, Ogden-Hinskley, VOR RWY 7, Amdt 5
Canadian, TX, Hemphill County NDB or GPS RWY 4, Amdt 3 Cancelled
Canadian, TX, Hemphill County NDB RWY 4, Amdt 3
Canadian, TX, Hemphill County NDB or GPS RWY 22, Amdt 3 Cancelled
Canadian, TX, Hemphill County NDB RWY 22, Amdt 3
Eagle River, WI, Eagle River Union, VOR/DME or GPS RWY 4, Amdt 1 Cancelled
Eagle River, WI, Eagle River Union, VOR/DME RWY 4, Amdt 1
Lewisburg, WV, Greenbrier Valley, NDB or GPS RWY 4, Amdt 4A Cancelled
Lewisburg, WV, Greenbrier Valley, NDB RWY 4, Amdt 4A
Big Piney, WY, Big Piney-Marbleton, VOR or GPS RWY 31, Amdt 3 Cancelled
Big Piney, WY, Big Piney-Marbleton, VOR RWY 31, Amdt 3

[FR Doc. 97–22357 Filed 8–21–97; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 97

**[Docket No. 28992; Amdt. No. 1813]**

**RIN 2120–AA65**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certian airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by referenced-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

### For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

### For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

### By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

### The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on August 8, 1997.

**Thomas E. Stuckey,**

*Acting Director, Flight Standards Service.*

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

****Effective September 11, 1997*

Oxford, CT, Waterbury-Oxford, ILS RWY 36, Amdt 11
Dublin, GA, W. H. ''Bud'' Barron, LOC RWY 2, Amdt 3, Cancelled
Dublin, GA, W. H. ''Bud'' Barron, ILS RWY 2, Orig
Dublin, GA, W. H. ''Bud'' Barron, NDB OR GPS RWY 2, Amdt 2
Belleville, IL, Midamerica, NDB RWY 32L, Orig
Belleville, IL, Midamerica, NDB RWY 32R, Orig
Belleville, IL, Midamerica, ILS RWY 14R, Orig
Belleville, IL, Midamerica, ILS RWY 32L, Orig
Belleville, IL, Midamerica, ILS RWY 32R, Orig
Belleville, IL, Midamerica, GPS RWY 14L, Orig
Belleville, IL, Midamerica, GPS RWY 14R, Orig
Belleville, IL, Midamerica, GPS RWY 32L, Orig
Belleville, IL, Midamerica, GPS RWY 32R, Orig
Carmi, IL, Carmi Muni, NDB or GPS RWY 36, Amdt 5, Cancelled
Carmi, IL, Carmi Muni, NDB RWY 36, Orig
New Orleans, LA, New Orleans Intl (Moisant Field), RADAR–1, Amdt 16
Montgomery, NY, Orange County, LOC RWY 3, Amdt 4, Cancelled
Montgomery, NY, Orange County, ILS RWY 3, Orig
Charlotte, NC, Charlotte/Douglas Intl, ILS RWY 18L, Amdt 4
Decatur, TX, Decatur Muni, VOR/DME RWY 16, Amdt 1
Houston, TX, Clover Field, VOR–A, Orig
Houston, TX, Clover Field, VOR/DME OR GPS–A, Amdt 3, Cancelled

****Effective October 9, 1997*

Orlando, FL, Executive, Radar-1, Amdt 25
Ames, IA, Ames Muni, NDB OR GPS RWY 13, Amdt 4A, Cancelled

Ames, IA, Ames Muni, NDB RWY 31, Amdt 10A, Cancelled
Aurora, MO, Aurora Memorial Muni, VOR/DME OR GPS–A, Amdt 3
Aurora, MO, Aurora Mrmorial Muni, GPS RWY 36, Orig
Scribner, NE, Scribner State, VOR RWY 35, Amdt 1
Columbia, SC, Columbia Owens Downtown, RNAV RWY 31, Orig, Cancelled

****Effective November 6, 1997*

Anchorage, AK, Anchorage Intl, ILS RWY 6L, Amdt 9
Anchorage, AK, Anchorage Intl, ILS RWY 6R, Amdt 11
Bay Minette, AL, Bay Minette Muni, GPS RWY 8, Orig
Mobile, AL, Mobile Downtown, RADAR-A, Orig-A, Cancelled
Gainesville, FL, Gainesville Regional, GPS RWY 6, Orig
Gainesville, FL, Gainesville Regional, GPS RWY 24, Orig
Billings, MT, Billings Logan Intl, GPS RWY 10L, Orig
Billings, MT, Billings Logan Intl, GPS RWY 28R, Orig
Clinton, NC, Sampson County, GPS RWY 6, Orig
Clinton, NC, Sampson County, GPS RWY 24, Orig
Coshocton, OH, Richard Downing, GPS RWY 22, Orig
Conway, SC, Conway-Horry County, GPS RWY 4, Orig
Conway, SC, Conway-Horry County, GPS RWY 22, Orig
Bremerton, WA, Bremerton National, GPS RWY 1, Orig
Wisconsin Rapids, WI, Alexander Field South Wood County, GPS RWY 20, Orig
Lewisburg, WV, Greenbrier Valley, GPS RWY 4, Orig
Lewisburg, WV, Greenbrier Valley, GPS RWY 22, Orig

[FR Doc. 97–22355 Filed 8–21–97; 8:45 am]
BILLING CODE 4910–13–M

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 8729]**

**RIN 1545–AV37**

## Rules for Property Produced in a Farming Business

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations relating to the application of section 263A of the Internal Revenue Code to property produced in a farming business. These regulations affect certain taxpayers engaged in the trade or business of farming. These regulations are necessary to provide guidance with respect to section 263A(d).

The text of the 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 August 22, 1997. For dates of applicability, see § 1.263A–4T(f) of these regulations.

**FOR FURTHER INFORMATION CONTACT:** Jan Skelton, (202) 622–4970 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

### Background

Prior to the enactment of section 263A, the rules that governed the deduction or capitalization of costs incurred with respect to property produced in the trade or business of farming were set forth in several different statutory and regulatory provisions. Costs regarded as preparatory expenditures were required to be capitalized under section 263. Preparatory expenditures are expenditures incurred prior to raising agricultural or horticultural commodities or that otherwise enable a farmer to begin the farming process. See, e.g., Rev. Rul. 83–28, 1983–1 C.B. 47. Preparatory expenditures include the costs of clearing land, leveling and grading land, drilling and equipping wells, acquiring irrigation systems, acquiring seeds or seedlings, budding trees, and acquiring animals.

Costs regarded as developmental expenditures (sometimes referred to as cultural practices expenditures) were generally permitted to be deducted, or, at a taxpayer's election, could be capitalized. See, e.g.,*Wilbur* v. *Commissioner*, 43 T.C. 322 (1964), acq., 1965–2 C.B. 7. Developmental expenditures are those expenditures incurred by a taxpayer so that the growing process may continue in the desired manner. Developmental expenditures are expenditures that, if incurred while the plant or animal was in a productive state, would be deductible. See, *Maple* v. *Commissioner*, 27 T.C.M. 944 (1968), *aff'd*, 440 F.2d 1055 (9th Cir. 1971). Developmental expenditures include the costs of irrigating, fertilizing, spraying, cultivating, pruning, feeding, providing veterinary services, rent on land, and depreciation allowances on irrigation systems or structures.

Former sections 278 and 447 provided special rules requiring the capitalization of certain developmental expenditures. Former section 278(a) provided special rules for citrus and almond groves. Under former section 278(a), all otherwise deductible costs of developing citrus or almond groves incurred before the end of the fourth taxable year after permanent planting were required to be capitalized. Rev. Rul. 83–128, 1983–2 C.B. 57, clarified that the costs incurred prior to permanent planting were also required to be capitalized.

Former sections 278(b) and 447(b) provided special rules for farming syndicates, corporations, and partnerships with a corporate partner. Section 447 requires certain corporations and partnerships with a corporate partner to use an accrual method of accounting (accrual method). Former section 447(b) required these taxpayers to capitalize preproductive period expenses. Preproductive period expenses were defined as any expenses attributable to crops, animals, trees, or other property having a crop or yield and that are incurred during the preproductive period of such property. Soil and water conservation expenditures, as defined in section 175, and land-clearing expenditures as defined in former section 182, are preproductive period expenses if they are incurred in a preproductive period of an agricultural or horticultural activity and if the taxpayer elects to deduct these expenses rather than capitalize them. House Comm. on Ways and Means, Tax Reform Act of 1975, H.R. Rep. No. 94–658, 94th Cong., 1st Sess. 93 (1975).

In the case of a farming syndicate engaged in planting, cultivating, maintaining, or developing an orchard, vineyard, or grove, former section 278(b) required the capitalization of all otherwise deductible expenditures incurred with respect to the orchard, vineyard, or grove, if incurred prior to the first taxable year in which there was a crop or yield in commercial quantities.

Former section 278(c) provided a relief provision. Under this provision, sections 278 (a) or (b) would not require the capitalization of developmental expenditures attributable to an orchard, vineyard, or grove that was replanted after having been lost or damaged by reason of freezing temperatures, disease, drought, pests, or casualty.

Section 263A, enacted in the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085, 1986–3 C.B. Vol. 1 (the 1986 Act), provides uniform capitalization rules that govern the treatment of costs incurred in the production of property or the acquisition of property for resale. Section 263A was enacted, in part, to

prevent the inappropriate mismatching of income and expense that results from the current deduction of the costs of producing property. Section 263A generally incorporates and expands upon the rules set forth in several code and regulatory sections, including section 263, and former sections 278 and 447.

Section 263A(b) generally provides that the uniform capitalization rules apply to the taxpayer's production of real or tangible personal property. Section 1.263A–2(a)(1)(i) clarifies that for purposes of section 263A, produce includes the following: construct, build, install, manufacture, develop, improve, create, raise, or grow. Sections 263A (d) and (e) provide special rules for property produced in a farming business.

Section 263A, as enacted in 1986, generally required taxpayers to capitalize the costs of producing plants and animals. Taxpayers not required by section 447 or 448(a)(3) to use an accrual method were excepted from capitalizing the preproductive period costs of plants and animals (except animals held for slaughter) that had a preproductive period of 2 years or less. Section 263A was amended as part of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, 101 Stat. 1330, 1987–3 C.B. Vol. 1 (the 1987 Act), the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, 102 Stat. 3342, 1988–3 C.B. Vol. 1 (the 1988 Act), and the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239, 103 Stat. 2106 (the 1989 Act). Under the 1988 Act, the scope of the exception for these taxpayers is expanded to include all animals irrespective of the length of the preproductive period.

In addition, taxpayers not required by section 447 or 448(a)(3) to use an accrual method may elect not to capitalize the costs of plants (other than certain costs of producing citrus and almond trees) with a preproductive period in excess of 2 years. If a taxpayer makes this election, the taxpayer must treat such plants as section 1245 property and upon disposition of these plants any amount allowable as a deduction that would, but for the election, have been capitalized must be recaptured and treated as a deduction allowed for depreciation with respect to such property. See section 263A(e)(1). Also, if the taxpayer makes the election, the taxpayer and related persons must apply the alternative depreciation system provided in section 168(g)(2) to all property used by the taxpayer or related person predominantly in a farming business and placed in service in any taxable year in which the election out of section 263A is in effect. See section 263A(e)(2).

On March 30, 1987, the IRS published in the **Federal Register** a notice of proposed rulemaking (52 FR 10118) by cross reference to temporary regulations published the same day (T.D. 8131, 52 FR 10052). Amendments to the notice of proposed rulemaking and temporary regulations were published in the **Federal Register** on August 7, 1987, by a notice of proposed rulemaking (52 FR 29391) that cross referenced to temporary regulations published the same day (T.D. 8148, 52 FR 29375). Notice 88–24, 1988–1 C.B. 491, provided that forthcoming regulations would modify the temporary regulations and the regulations under § 1.471–6. Notice 88–86, 1988–2 C.B. 401, provided that forthcoming regulations would clarify the definition of a related person for purposes of the election out of section 263A. In addition, Notice 88–86 provided that forthcoming regulations would provide that certain taxpayers could elect to use the simplified production method for property used in the trade or business of farming. On August 5, 1994, the temporary regulations relating to property produced in a farming business were reissued and published in the **Federal Register** (T.D. 8559, 59 FR 39958). Because substantial changes are being made from the 1994 temporary regulations, the IRS and Treasury Department have decided to issue, in part, new proposed and temporary, rather than final, regulations.

## Explanation of Provisions

### *Property Produced in the Trade or Business of Farming*

The temporary regulations clarify that the special rules of section 263A(d) apply only to property produced in a farming business. The temporary regulations provide that for purposes of section 263A, the term farming means the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity. Examples include the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit, nuts, or other crops; the raising of ornamental trees (other than evergreen trees that are more than six years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals. The regulations clarify that for this purpose harvesting does not include contract harvesting of an agricultural or horticultural commodity grown or raised by another taxpayer. Accordingly, while a taxpayer that grows a plant may apply the special rules of section 263A(d) to the costs of growing and harvesting the plant, the special rules of section 263A(d) do not apply to a taxpayer that merely contract harvests agricultural or horticultural commodities grown or raised by another taxpayer. Similarly, the temporary regulations clarify that the special rules of section 263A(d) do not apply to a taxpayer that merely buys and resells plants or animals grown or raised by another. In evaluating whether a taxpayer is engaged in the production, or merely the resale, of plants or animals, it is anticipated that consideration will be given to factors including: The length of time between the taxpayer's acquisition of a plant or animal and the time the plant or animal is made available for sale to the taxpayer's customers, and, in the case of plants, whether plants acquired by the taxpayer are planted in the ground or kept in temporary containers.

The temporary regulations provide that a farming business does not include the processing of commodities or products beyond those activities that are incident to the growing, raising, or harvesting of such products.

### *Preparatory and Developmental Costs*

The IRS and Treasury Department believe that, in general, section 263A does not change the rules regarding capitalization of costs during the preparatory period. Thus, the temporary regulations clarify that, as under prior law, taxpayers generally must capitalize preparatory expenditures, including the cost of seeds, seedlings, and animals; clearing, leveling and grading land; drilling and equipping wells; irrigation systems; and budding trees. However, because section 263A requires the capitalization of certain indirect costs as well as direct costs, the amount of preparatory expenditures capitalized may be greater under section 263A than under prior law.

Section 263A expands the circumstances under which costs that were once termed developmental expenditures must be capitalized. The temporary regulations clarify that costs that were, in years prior to the enactment of section 263A, regarded as developmental are included in the category of preproductive period costs. Section 263A generally requires the capitalization of preproductive period costs including the costs of irrigating, fertilizing, spraying, cultivating, pruning, feeding, providing veterinary services, rent on land, and depreciation allowances on irrigation systems or structures. Preproductive period costs also include real estate taxes, interest,

and soil and water conservation expenditures incurred during the preproductive period of a plant.

Taxpayers that are required by section 447 or 448(a)(3) to use an accrual method must capitalize all preproductive period costs of plants (without regard to the length of the preproductive period) and animals. Taxpayers that are not required by section 447 or 448(a)(3) to use an accrual method qualify for an exception to this general rule. Under this exception, taxpayers are not required to capitalize preproductive period costs incurred with respect to animals, or with respect to plants that have a preproductive period of 2 years or less. Thus, under this exception, taxpayers are required to capitalize only those preproductive period costs incurred with respect to plants that have a preproductive period in excess of 2 years. The temporary regulations clarify that, for purposes of determining whether a plant has a preproductive period in excess of 2 years, in the case of a plant grown in commercial quantities in the United States, the nationwide weighted average preproductive period of such plant is used.

The IRS and Treasury Department are considering the publication of guidance with respect to the length of the preproductive period of certain plants that will have more than one crop or yield. At the present time, the IRS and Treasury Department anticipate that such guidance would provide that plants producing the following crops or yields have a nationwide weighted average preproductive period in excess of 2 years: almonds, apples, apricots, avocados, blueberries, blackberries, cherries, chestnuts, coffee beans, currants, dates, figs, grapefruit, grapes, guavas, kiwifruit, kumquats, lemons, limes, macadamia nuts, mangoes, nectarines, olives, oranges, peaches, pears, pecans, persimmons, pistachio nuts, plums, pomegranates, prunes, raspberries, tangelos, tangerines, tangors, and walnuts. The IRS and Treasury Department invite comments on this issue.

*Capitalization Period*

Preproductive period costs (e.g., irrigating, fertilizing, real estate taxes, etc.) are capitalized during the preproductive period of a plant or animal. A taxpayer that grows a plant that will have more than one crop or yield is engaged in the production of two types of property, the plant and the crop or yield of the plant (e.g., the orange tree and the orange). The temporary regulations clarify the capitalization period for plants that will have more than one crop or yield, for crops or yields of plants that will have more than one crop or yield, and for other plants.

The temporary regulations clarify that the preproductive period of a plant generally begins when a taxpayer first incurs costs with respect to the plant, e.g., when the plant is acquired or the seed is planted. In the case of the crop or yield of a plant that has become productive in marketable quantities, the preproductive period of the crop or yield begins when the crop or yield first appears, whether in the form of a sprout, bloom, blossom, bud, etc.

In the case of a plant that will have more than one crop or yield, the preproductive period of the plant ends when the plant becomes productive in marketable quantities (i.e., when the plant is placed in service for purposes of depreciation). In the case of the crop or yield of a plant that has become productive in marketable quantities, the preproductive period of the crop or yield ends when the crop or yield is disposed of. Finally, in the case of other plants, the preproductive period ends when the plant is disposed of.

The temporary regulations provide that the preproductive period of an animal begins at the time of acquisition, breeding, or embryo implantation. The temporary regulations clarify that, in the case of an animal that will be used in the trade or business of farming, the preproductive period generally ends when the animal is placed in service for purposes of depreciation. However, in the case of an animal that will have more than one yield, the preproductive period ends when the animal produces (e.g., gives birth to) its first yield. In the case of any other animal, the preproductive period ends when the animal is sold or otherwise disposed of. The temporary regulations additionally clarify that, in the case of an animal that will have more than one yield, the costs incurred after the beginning of the preproductive period of the first yield but before the end of the preproductive period of the animal must be allocated between the animal and the yield on a reasonable and consistent basis. Any depreciation allowance on the animal may be allocated entirely to the yield.

*Method of Capitalizing Costs*

The temporary regulations provide that the costs required to be capitalized with respect to farming property may, if the taxpayer chooses, be determined using any reasonable inventory valuation method, such as the farm-price method of accounting (farm-price method) or the unit-livestock-price method of accounting (unit-livestock-price method). The use of these inventory valuation methods avoids the necessity of accounting for the costs of raising plants or animals by tracing costs to each separate plant or animal. In addition, under the temporary regulations, these inventory methods may be used by a taxpayer regardless of whether the farming property being produced is otherwise treated as inventory by the taxpayer, and regardless of whether the taxpayer is otherwise using the cash method or an accrual method.

The temporary regulations clarify that notwithstanding a taxpayer's use of the farm-price method with respect to farming property to which the provisions of section 263A apply, the taxpayer is not required, solely by such use, to use the same method of accounting with respect to farming property to which the provisions of section 263A do not apply.

Under the unit-livestock-price method, the taxpayer adopts a standard unit price for each animal within a particular class. This standard unit price is used by the taxpayer in lieu of specifically identifying and tracing the costs of raising each animal in the taxpayer's farming business. Taxpayers using the unit-livestock-price method must adopt a reasonable method of classifying animals with respect to their age and kind so that the unit prices assigned by the taxpayer to animals in each class are reasonable. Thus, taxpayers using the unit-livestock-price method typically classify livestock based on their age (for example, a separate class will typically be established for calves, yearlings, and 2-year olds).

The temporary regulations under section 263A modify the rule set forth in § 1.471–6 providing that no increase in unit cost is required under the unit-livestock-price method with respect to the taxable year in which certain animals are purchased, if the purchases occur in the last 6 months of the taxable year. The temporary regulations provide that any taxpayer required to use an accrual method under section 448(a)(3) must include in inventory the annual standard unit price for all animals purchased during the taxable year, regardless of when in the taxable year the purchases are made. The temporary regulations further amend this rule and provide that all taxpayers using the unit-livestock-price method must modify the annual standard price to reasonably reflect the particular period in the taxable year in which purchases of livestock are made, if such modification is necessary in order to

avoid significant distortions in income that would otherwise occur through operation of the unit-livestock-price method. The temporary regulations do not specify the particular modification that must be made to the annual standard price for any particular taxpayer, but rather allow any reasonable modification made by the taxpayer to the annual standard price to avoid significant distortions in income. For example, assume a taxpayer purchases and raises cattle for slaughter. Assume further that the taxpayer is required to use an accrual method under section 447 so that section 263A applies to the taxpayer's costs of raising the cattle. The temporary regulations provide that the taxpayer may not expense the costs of raising cattle that are purchased in the latter half of the taxpayer's taxable year. Instead, the taxpayer must modify the annual standard price so as to reasonably capitalize the costs of raising the cattle, based on the date of their purchase.

In Notice 88–86, the IRS noted that commentators had inquired as to the availability of the simplified production method of accounting (simplified production method) for farmers using the unit-livestock-price method for the costs of raising livestock. The temporary regulations clarify that farmers using the unit-livestock-price method are permitted to elect the simplified production method, as well as the simplified service cost method of accounting, under section 263A. In such a situation, section 471 costs are the costs taken into account by the taxpayer under the unit-livestock-price method using the taxpayer's standard unit price determined under these temporary and final regulations. The term additional section 263A costs includes all additional costs required to be capitalized under section 263A including costs that are required to be capitalized under section 263A that are not reflected in the standard unit prices (e.g., general and administrative costs and depreciation, including depreciation on a calf's mother).

In light of the additional costs required to be capitalized under section 263A, taxpayers should not adopt unit prices utilized under pre-section 263A unit-livestock-price rules without carefully analyzing whether these unit prices reflect all of the costs required to be capitalized under section 263A.

*Election Not To Capitalize Costs*

Certain taxpayers, other than those required to use an accrual method by section 447 or 448(a)(3), may elect not to capitalize the preproductive period costs of certain plants even though such plants have a preproductive period in excess of 2 years and would otherwise be subject to the capitalization requirements of section 263A. Taxpayers making this election may continue to deduct (subject to other limitations of the Code) the preproductive period costs that were deductible under the rules in effect before the enactment of section 263A. The temporary regulations clarify that although a taxpayer producing a citrus or almond grove may make this election, the election does not apply to the preproductive period costs of a citrus or almond grove that are incurred before the close of the fourth taxable year beginning with the taxable year in which the trees were planted.

If a taxpayer makes this election with respect to any plant, the taxpayer must treat the plant as section 1245 property. In addition, the taxpayer, and any person related to the taxpayer, must use the alternative depreciation system of section 168(g)(2) for any property used predominantly in a farming business that is placed in service in a taxable year for which the election is in effect.

*Casualty Loss Exception*

Section 263A(d) provides an exception from capitalization for preproductive period costs incurred with respect to plants that are replacing certain plants that were lost by reason of certain casualties. The temporary regulations clarify that this exception for preproductive period costs does not apply to preparatory expenditures or the costs of capital assets. In addition, the temporary regulations clarify that the casualty loss exception applies whether the plants are replanted on the same parcel of land as the plants destroyed by casualty or a parcel of land of the same acreage in the United States. The temporary regulations additionally clarify that the exception applies to all plants replanted on such acreage, even if the plants are replanted in greater density than the plants destroyed by the casualty.

*Final Regulations*

In final regulations, cross references to § 1.263A–4T are provided in §§ 1.61–4, 1.162–12, 1.263A–1, and 1.471–6.

Under § 1.471–6(f), taxpayers using the unit livestock method may not subsequently change the classification or unit costs they initially adopted without obtaining the approval of the Commissioner. As provided in Notice 88–24, the final regulations modify the rule in § 1.471–6(f) and require that taxpayers adjust the unit prices upward from time to time, to reflect increases in costs taxpayers experience in raising livestock. Any other changes in the classification or unit prices used in the unit-livestock-price method will continue to be allowed only with the consent of the Commissioner.

*Effective Date and Transitional Rule*

The temporary regulations provide that, in the case of property that is not inventory in the hands of the taxpayer, the regulations are generally effective for costs incurred on or after August 22, 1997, in taxable years ending after such date. In the case of inventory property, the temporary regulations are generally effective for taxable years beginning after August 22, 1997. However, taxpayers in compliance with § 1.263A–4T in effect prior to August 22, 1997 (See 26 CFR part 1 edition revised as of April 1, 1997.), as modified by other administrative guidance, that continue to comply with § 1.263A–4T in effect prior to August 22, 1997 (See 26 CFR part 1 edition revised as of April 1, 1997.), as modified by other administrative guidance, will not be required to apply these new temporary rules until the notice of proposed rulemaking that cross-references these temporary regulations is finalized. The amendment to § 1.471–6(f) is effective for taxable years beginning after August 22, 1997.

**Effect on Other Documents**

The following publications will be obsolete when the notice of proposed rulemaking that cross-references these temporary regulations is finalized: Notice 87–76, 1987–2 C.B. 384; Notice 88–24, 1988–1 C.B. 491; and section V of Notice 88–86, 1988–2 C.B. 401.

**Special Analyses**

It has been determined that this Treasury decision is 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 the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the temporary regulations will be submitted, and the notice of proposed rulemaking that preceded the final regulations were submitted, to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information: The principal author of these temporary regulations is Jan Skelton of the Office of Assistant

Chief Counsel (Income Tax and Accounting). 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.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR Part 1 is amended as follows:

## PART 1—INCOME TAXES

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

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

**§ 1.61–4 [Amended]**

**Par. 2.** Section 1.61–4 is amended by:

1. Adding a new sentence ''See section 263A for rules regarding costs that are required to be capitalized.'' at the end of the concluding text of paragraph (a).

2. Adding a new sentence ''See section 263A for rules regarding costs that are required to be capitalized.'' after the fourth sentence of the concluding text of paragraph (b).

**§ 1.162–12 [Amended]**

**Par. 3.** Section 1.162–12(a) is amended by:

1. Removing the eighth sentence, and adding the sentence ''For rules regarding the capitalization of expenses of producing property in the trade or business of farming, see section 263A and § 1.263A–4T.'' in its place.

2. Adding a new sentence ''For rules regarding the capitalization of expenses of producing property in the trade or business of farming, see section 263A and the regulations thereunder.'' after the third sentence.

**Par. 4.** Section 1.263A–0T is added to read as follows:

**§ 1.263A–0T Outline of regulations under section 263A (temporary).**

This section lists the paragraphs in § 1.263A–4T.

*§ 1.263A–4T Rules for property produced in a farming business (temporary).*

(a) Introduction.
(1) In general.
(2) Exception.
(i) In general.
(ii) Tax shelter.
(iii) Presumption.
(iv) Costs required to be capitalized or inventoried under another provision.
(v) Examples.
(3) Farming business.
(i) In general.
(A) Plant.
(B) Animal.
(ii) Incidental activities.
(A) In general.
(B) Activities that are not incidental.
(*1*) In general.
(*2*) Examples.
(b) Application of section 263A to property produced in a farming business.
(1) In general.
(i) Plants.
(ii) Animals.
(2) Preproductive period.
(i) Plant.
(A) In general.
(B) Applicability of section 263A.
(C) Actual preproductive period.
(*1*) Beginning of the preproductive period.
(*2*) End of the preproductive period.
(*i*) In general.
(*ii*) Marketable quantities.
(D) Examples.
(ii) Animal.
(A) Beginning of the preproductive period.
(B) End of the preproductive period.
(C) Allocation of costs between animal and first yield.
(c) Inventory methods.
(1) In general.
(2) Available for property used in a trade or business.
(3) Exclusion of property to which section 263A does not apply.
(d) Election not to have section 263A apply.
(1) Introduction.
(2) Availability of the election.
(3) Time and manner of making the election.
(4) Special rules.
(i) Section 1245 treatment.
(ii) Required use of alternative depreciation system.
(iii) Related person.
(A) In general.
(B) Members of family.
(5) Examples.
(e) Exception for certain costs resulting from casualty losses.
(1) In general.
(2) Ownership.
(3) Examples.
(4) Special rule for citrus and almond groves.
(i) In general.
(ii) Example.
(f) Effective date and transition rule.

**§ 1.263A–1 [Amended]**

**Par. 5.** Section 1.263A–1 is amended by:

1. Removing the last sentence of paragraph (b)(3) and adding the sentence ''See § 1.263A–4T for specific rules relating to taxpayers engaged in the trade or business of farming.'' in its place.

2. Removing the last sentence of paragraph (b)(4) and adding the sentence ''See § 1.263A–4T, however, for rules relating to taxpayers producing certain trees to which section 263A applies.'' in its place.

**Par. 6.** Section 1.263A–4T is revised to read as follows:

**§ 1.263A–4T Rules for property produced in a farming business (temporary).**

(a) *Introduction*—(1) *In general.* The regulations under this section provide guidance with respect to the application of section 263A to property produced in a farming business as defined in paragraph (a)(3) of this section. Except as otherwise provided by the rules of this section, the general rules of §§ 1.263A–1 through 1.263A–3 and 1.263A–7 through 1.263A–15 apply to property produced in a farming business. A taxpayer that engages in the raising or growing of any agricultural or horticultural commodity, including both plants and animals, is engaged in the production of property. Section 263A generally requires the capitalization of the direct costs and an allocable portion of the indirect costs that benefit or are incurred by reason of the production of this property. Taxpayers that do not qualify for the exception described in paragraph (a)(2) of this section must capitalize these costs of producing all plants and animals unless the election described in paragraph (d) of this section is made.

(2) *Exception*—(i) *In general.* A taxpayer is not required to capitalize the preproductive period costs of producing plants with a preproductive period of 2 years or less or the costs of producing animals, if the taxpayer is not—

(A) A corporation or partnership required to use an accrual method of accounting (accrual method) under section 447 in computing its taxable income from farming; or

(B) A tax shelter required to use an accrual method under section 448(a)(3).

(ii) *Tax shelter.* A farming business is considered a tax shelter, and thus a taxpayer required to use an accrual method under section 448(a)(3), if the farming business is—

(A) A farming syndicate as defined in section 464(c); or

(B) A tax shelter, within the meaning of section 6662(d)(2)(C)(iii).

(iii) *Presumption.* Marketed arrangements in which persons carry on farming activities using the services of a common managerial or administrative service will be presumed to have the principal purpose of tax avoidance, within the meaning of section 6662(d)(2)(C)(iii), if such persons prepay a substantial portion of their farming expenses with borrowed funds.

(iv) *Costs required to be capitalized or inventoried under another provision.* The exception from capitalization provided in this paragraph (a)(2) does not apply to any cost that is required to be capitalized or inventoried under another Code or regulatory provision, such as section 263 or section 471.

(v) *Examples.* The following examples illustrate the provisions of this paragraph (a)(2):

*Example 1.* Farmer A grows trees that have a preproductive period in excess of 2 years, and that produce an annual crop. Farmer A is not required by section 447 or 448(a)(3) to use an accrual method. Accordingly, Farmer A qualifies for the exception described in this paragraph (a)(2). Since the trees have a preproductive period in excess of 2 years, Farmer A must capitalize the direct costs and an allocable portion of the indirect costs that benefit or are incurred by reason of the production of the trees. Since the annual crop has a preproductive period of 2 years or less, Farmer A is not required to capitalize the costs of the crops.

*Example 2.* Assume the same facts as *Example 1,* except that Farmer A is required by section 447 or 448(a)(3) to use an accrual method. Farmer A does not qualify for the exception described in this paragraph (a)(2). Farmer A is required to capitalize the direct costs and an allocable portion of the indirect costs that benefit or are incurred by reason of the production of the trees and crops, including all preproductive period costs.

(3) *Farming business*—(i) *In general.* A farming business means a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity. Examples include the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit, nuts, or other crops; the raising of ornamental trees (other than evergreen trees that are more than 6 years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals. For purposes of this section, the term harvesting does not include contract harvesting of an agricultural or horticultural commodity grown or raised by another. Similarly, the trade or business of merely buying and reselling plants or animals grown or raised by another is not a farming business.

(A) *Plant.* A plant produced in a farming business includes, but is not limited to, a fruit, nut, or other crop bearing tree, an ornamental tree, a vine, a bush, sod, and the crop or yield of a plant that will have more than one crop or yield. Sea plants are produced in a farming business if they are tended and cultivated as opposed to merely harvested.

(B) *Animal.* An animal produced in a farming business includes, but is not limited to, any stock, poultry or other bird, and fish or other sea life raised by the taxpayer. Thus, for example, the term animal may include a cow, chicken, emu, or salmon raised by the taxpayer. Fish and other sea life are produced in a farming business if they are raised on a fish farm.

A fish farm is an area where fish or other sea life are grown or raised as opposed to merely caught or harvested.

(ii) *Incidental activities*—(A) *In general.* Farming business includes processing activities that are normally incident to the growing, raising, or harvesting of agricultural products. For example, a taxpayer in the trade or business of growing fruits and vegetables may harvest, wash, inspect, and package the fruits and vegetables for sale. Such activities are normally incident to the raising of these crops by farmers. The taxpayer will be considered to be in the trade or business of farming with respect to the growing of fruits and vegetables and the processing activities incident to their harvest.

(B) *Activities that are not incidental*—(*1*) *In general.* Farming business does not include the processing of commodities or products beyond those activities that are normally incident to the growing, raising, or harvesting of such products.

(*2*) *Examples.* The following examples illustrate the provisions of this paragraph (a)(3)(ii):

*Example 1.* Individual A is in the business of growing and harvesting wheat and other grains. Individual A also processes grain that Individual A has harvested in order to produce breads, cereals, and other similar food products, which Individual A then sells to customers in the course of its business. Although Individual A is in the farming business with respect to the growing and harvesting of grain, Individual A is not in the farming business with respect to the processing of such grain to produce the food products.

*Example 2.* Individual B is in the business of raising poultry and other livestock. Individual B also operates a meat processing operation in which the poultry and other livestock are slaughtered, processed, and packaged or canned. The packaged or canned meat is sold to Individual B's customers. Although Individual B is in the farming business with respect to the raising of poultry and other livestock, Individual B is not in the farming business with respect to the slaughtering, processing, packaging, and canning of such animals to produce the food products.

(b) *Application of section 263A to property produced in a farming business*—(1) *In general.* Unless otherwise provided in this section, section 263A requires the capitalization of the direct costs and an allocable portion of the indirect costs that benefit or are incurred by reason of the production of any property in a farming business (including animals and plants without regard to the length of their preproductive period).

(i) *Plants.* Costs typically required to be capitalized under section 263A include the acquisition costs of the seed, seedling, or plant, and the costs of planting, cultivating, maintaining, or developing such plant during the preproductive period. These costs include, but are not limited to, management, irrigation, pruning, fertilizing (including costs that the taxpayer has elected to deduct under section 180), soil and water conservation (including costs that the taxpayer has elected to deduct under section 175), frost protection, spraying, upkeep, electricity, tax depreciation and repairs on buildings and equipment used in raising the plants, farm overhead, taxes (except state and federal income taxes), and interest required to be capitalized under section 263A(f).

(ii) *Animals.* Costs typically required to be capitalized under section 263A include the acquisition cost of the animal, and the costs of raising or caring for such animal during the preproductive period. Preproductive period costs include, but are not limited to, the costs of management, feed (such as grain, silage, concentrates, supplements, haylage, hay, pasture and other forages), maintaining pasture or pen areas (including costs that the taxpayer has elected to deduct under sections 175 or 180), breeding, artificial insemination, veterinary services and medicine, livestock hauling, bedding, fuel, electricity, hired labor, tax depreciation and repairs on buildings and equipment used in raising the animals (for example, barns, trucks, and trailers), farm overhead, taxes (except state and federal income taxes), and interest required to be capitalized under section 263A(f).

(2) *Preproductive period*—(i) *Plant*—(A) *In general.* The preproductive period of property produced in a farming business means—

(*1*) In the case of a plant that will have more than one crop or yield, the period before the first marketable crop or yield from such plant;

(*2*) In the case of the crop or yield of a plant that will have more than one crop or yield, the period before such crop or yield is disposed of; or

(*3*) In the case of any other plant, the period before such plant is disposed of.

(B) *Applicability of section 263A.* For purposes of determining whether a plant has a preproductive period in excess of 2 years, the preproductive period of plants grown in commercial quantities in the United States is based on the nationwide weighted average preproductive period for such plant. For all other plants, the taxpayer is required, at or before the time the seed or plant is acquired or planted, to reasonably estimate the preproductive period of the

plant. If the taxpayer estimates a preproductive period in excess of 2 years, the taxpayer must capitalize preproductive period costs. If the estimate is reasonable, based on the facts in existence at the time it is made, the determination of whether section 263A applies is not modified at a later time even if the actual length of the preproductive period differs from the estimate. The actual length of the preproductive period will, however, be considered in evaluating the reasonableness of the taxpayer's future estimates. Thus, the nationwide weighted average preproductive period or the estimated preproductive period are only used for purposes of determining whether the preproductive period of a plant is greater than 2 years.

(C) *Actual preproductive period.* The plant's actual preproductive period is used for purposes of determining the period during which a taxpayer must capitalize preproductive period costs with respect to a particular plant.

(*1*) *Beginning of the preproductive period.* The actual preproductive period of a plant begins when the taxpayer first incurs costs that directly benefit or are incurred by reason of the plant. Generally, this occurs when the taxpayer plants the seed or plant. In the case of a taxpayer that acquires plants that have already been planted, or plants that are tended, by the taxpayer or another, prior to permanent planting, the actual preproductive period of the plant begins upon acquisition of the plant by the taxpayer. In the case of the crop or yield of a plant that will have more than one crop or yield and that has become productive in marketable quantities, the actual preproductive period begins when the crop or yield first appears, for example, in the form of a sprout, bloom, blossom, or bud.

(*2*) *End of the preproductive period*—(*i*) *In general.* In the case of a plant that will have more than one crop or yield, the actual preproductive period ends when the plant first becomes productive in marketable quantities. In the case of any other plant (including the crop or yield of a plant that will have more than one crop or yield), the actual preproductive period ends when the plant, crop, or yield is sold or otherwise disposed of.

(*ii*) *Marketable quantities.* A plant that will have more than one crop or yield becomes productive in marketable quantities when it is (or would be considered) placed in service for purposes of section 168 (without regard to the applicable convention).

(D) *Examples.* The following examples illustrate the provisions of this paragraph (b)(2)(i):

*Example 1.* (i) Farmer A, a taxpayer that qualifies for the exception in paragraph (a)(2) of this section, grows plants that will have more than one crop or yield. The plants are grown in commercial quantities in the United States. Farmer A acquires the plants by purchasing them from an unrelated party, Corporation B, and plants them immediately. The nationwide weighted average preproductive period of the plant is 4 years. The particular plants grown by Farmer A do not begin to produce in marketable quantities until 4 years and 6 months after they are planted by Farmer A.

(ii) Since the plants are deemed to have a preproductive period in excess of 2 years, Farmer A is required to capitalize the preproductive period costs of the plants. See paragraphs (a)(2) and (b)(2)(i)(B) of this section. In accordance with paragraph (b)(2)(i)(C)(*1*) of this section, Farmer A must begin to capitalize such costs when the plants are planted. In accordance with paragraph (b)(2)(i)(C)(*2*) of this section, Farmer A must continue to capitalize costs to the plants until the plants begin to produce in marketable quantities. Thus, Farmer A must capitalize the preproductive period costs of the plants for a period of 4 years and 6 months, notwithstanding the fact that the plants, in general, have a nationwide weighted average preproductive period of 4 years.

*Example 2.* (i) Farmer B, a taxpayer that qualifies for the exception in paragraph (a)(2) of this section, grows plants that will have more than one crop or yield. The plants are grown in commercial quantities in the United States. The nationwide weighted average preproductive period of the plant is 2 years and 5 months. Farmer B acquires the plants by purchasing them from an unrelated party, Corporation B. Farmer B enters into a contract with Corporation B under which Corporation B will retain and tend the plants for 7 months following the sale. At the end of 7 months, Farmer B takes possession of the plants and plants them in the permanent orchard. The plants become productive in marketable quantities 1 year and 11 months after they are planted by Farmer B.

(ii) Since the plants are deemed to have a preproductive period in excess of 2 years, Farmer B is required to capitalize the preproductive period costs of the plants. See paragraphs (a)(2) and (b)(2)(i)(B) of this section. In accordance with paragraph (b)(2)(i)(C)(*1*) of this section, Farmer B must begin to capitalize such costs when the purchase occurs. In accordance with paragraph (b)(2)(i)(C)(*2*) of this section, Farmer B must continue to capitalize costs to the plants until the plants begin to produce in marketable quantities. Thus, Farmer B must capitalize the preproductive period costs of the plants for a period of 2 years and 6 months (the 7 months the plants are tended by Corporation B and the 1 year and 11 months after the plants are planted by Farmer B), notwithstanding the fact that the plants, in general, have a nationwide weighted average preproductive period of 2 years and 5 months.

*Example 3.* (i) Assume the same facts as in *Example 2*, except that Farmer B acquires the plants by purchasing them from Corporation B when the plants are 7 months old and that the plants are planted by Farmer B upon acquisition.

(ii) Since the plants are deemed to have a preproductive period in excess of 2 years, Farmer B is required to capitalize the preproductive period costs of the plants. See paragraphs (a)(2) and (b)(2)(i)(B) of this section. In accordance with paragraph (b)(2)(i)(C)(*1*) of this section, Farmer B must begin to capitalize such costs when the plants are planted. In accordance with paragraph (b)(2)(i)(C)(*2*) of this section, Farmer B must continue to capitalize costs to the plants until the plants begin to produce in marketable quantities. Thus, Farmer B must capitalize the preproductive period costs of the plants for a period of 1 year and 11 months.

*Example 4.* (i) Farmer C, a taxpayer that qualifies for the exception in paragraph (a)(2) of this section, grows plants that will have more than one crop or yield. The plants are grown in commercial quantities in the United States. Farmer C acquires the plants from an unrelated party and plants them immediately. The nationwide weighted average preproductive period of the plant is 2 years and 3 months. The particular plants grown by Farmer C begin to produce in marketable quantities 1 year and 10 months after they are planted by Farmer C.

(ii) Since the plants are deemed to have a nationwide weighted average preproductive period in excess of 2 years, Farmer C is required to capitalize the preproductive period costs of the plants, notwithstanding the fact that the particular plants grown by Farmer C become productive in less than 2 years. See paragraph (b)(2)(i)(B) of this section. In accordance with paragraph (b)(2)(i)(C)(*1*) of this section, Farmer C must begin to capitalize such costs when it plants the plants. In accordance with paragraph (b)(2)(i)(C)(*2*) of this section, Farmer C properly ceases capitalization of preproductive period costs when the plants become productive in marketable quantities (i.e., after 1 year and 10 months).

*Example 5.* (i) Farmer D, a taxpayer that qualifies for the exception in paragraph (a)(2) of this section, grows plants that will have more than one crop or yield. The plants are not grown in commercial quantities in the United States. At the time the plants are planted Farmer D reasonably estimates that the plants will have a preproductive period of 4 years. The actual plants grown by Farmer D do not begin to produce in marketable quantities until 4 years and 6 months after they are planted by Farmer D.

(ii) Since the plants have an estimated preproductive period in excess of 2 years, Farmer D is required to capitalize the preproductive period costs of the plants. See paragraph (b)(2)(i)(B) of this section. In accordance with paragraph (b)(2)(i)(C)(*1*) of this section, Farmer D must begin to capitalize such costs when it plants the plants. In accordance with paragraph (b)(2)(i)(C)(*2*) of this section, Farmer D must continue to capitalize costs until the plants begin to produce in marketable quantities. Thus, Farmer D must capitalize the preproductive period costs of the plants for a period of 4 years and 6 months,

notwithstanding the fact that Farmer D estimated that the plants would become productive after 4 years.

*Example 6.* (i) Farmer E, a taxpayer that qualifies for the exception in paragraph (a)(2) of this section grows plants that are not grown in commercial quantities in the United States. The plants do not have more than 1 crop or yield. At the time the plants are planted Farmer E reasonably estimates that the plants will have a preproductive period of 1 year and 10 months. The actual plants grown by Farmer E are not ready for harvesting and disposal until 2 years and 2 months after the seeds are planted by Farmer E.

(ii) Because Farmer E's estimate of the preproductive period (which was 2 years or less) was reasonable at the time made based on the facts, Farmer E will not be required to capitalize the preproductive period costs of the plants notwithstanding the fact that the actual preproductive period of the plants exceeded 2 years. See paragraph (b)(2)(i)(B) of this section. However, Farmer E must take the actual preproductive period of the plants into consideration when making future estimates of the preproductive period of such plants.

*Example 7.* Farmer F, a calendar year taxpayer that does not qualify for the exception in paragraph (a)(2) of this section, grows trees that will have more than one crop. Farmer F acquires and plants the trees in April, 1998. On October 1, 2003, the trees are placed in service within the meaning of section 168. Under paragraph (b)(2)(i)(C)(*2*)(*ii*) of this section, the trees become productive in marketable quantities on October 1, 2003. The preproductive period costs incurred by Farmer F on or before October 1, 2003, are capitalized to the trees. Preproductive period costs incurred after October 1, 2003, are capitalized to a crop when incurred during the preproductive period of the crop and expensed when incurred between the disposal of one crop and the appearance of the next crop. *See* paragraphs (b)(2)(i)(A), (b)(2)(i)(C)(*1*) and (b)(2)(i)(C)(*2*) of this section.

(ii) *Animal.* An animal's actual preproductive period is used to determine the period that the taxpayer must capitalize preproductive period expenses with respect to a particular animal.

(A) *Beginning of the preproductive period.* The preproductive period of an animal begins at the time of acquisition, breeding, or embryo implantation.

(B) *End of the preproductive period.* In the case of an animal that will be used in the trade or business of farming (e.g., a dairy cow), the preproductive period generally ends when the animal is (or would be considered) placed in service for purposes of section 168 (without regard to the applicable convention). However, in the case of an animal that will have more than one yield (e.g., a breeding cow), the preproductive period ends when the animal produces (e.g., gives birth to) its first yield. In the case of any other animal, the preproductive period ends when the animal is sold or otherwise disposed of.

(C) *Allocation of costs between animal and first yield.* In the case of an animal that will have more than one yield, the costs incurred after the beginning of the preproductive period of the first yield but before the end of the preproductive period of the animal must be allocated between the animal and the yield on a reasonable basis. Any depreciation allowance on the animal may be allocated entirely to the yield. The allocation method used by a taxpayer is a method of accounting that must be used consistently and is subject to the rules of section 446 and the regulations thereunder.

(c) *Inventory methods*—(1) *In general.* Except as otherwise provided, the costs required to be allocated to any plant or animal under this section may be determined using reasonable inventory valuation methods such as the farm-price method or the unit-livestock-price method. See § 1.471–6. Under the unit-livestock-price method, unit prices must include all costs required to be capitalized under section 263A. A taxpayer using the unit-livestock-price method may elect to use the cost allocation methods in § 1.263A–1(f) or 1.263A–2(b) to allocate its direct and indirect costs to the property produced in the business of farming. In such a situation, section 471 costs are the costs taken into account by the taxpayer under the unit-livestock-price method using the taxpayer's standard unit price as modified by this paragraph (c)(1). The term additional section 263A costs includes all additional costs required to be capitalized under section 263A. Tax shelters, as defined in paragraph (a)(2)(ii) of this section, that use the unit-livestock-price method for inventories must include in inventory the annual standard unit price for all animals that are acquired during the taxable year, regardless of whether the purchases are made during the last 6 months of the taxable year. Taxpayers required by section 447 or 448(a)(3) to use an accrual method that use the unit-livestock-price method must modify the annual standard price in order to reasonably reflect the particular period in the taxable year in which purchases of livestock are made, if such modification is necessary in order to avoid significant distortions in income that would otherwise occur through operation of the unit livestock method.

(2) *Available for property used in a trade or business.* The farm price method or the unit livestock method may be used by any taxpayer to allocate costs to any plant or animal under this section, regardless of whether the plant or animal is held or treated as inventory property by the taxpayer. Thus, for example, a taxpayer may use the unit livestock method to account for the costs of raising livestock that will be used in the trade or business of farming (e.g., a breeding animal or a dairy cow) even though the property in question is not inventory property.

(3) *Exclusion of property to which section 263A does not apply.* Notwithstanding a taxpayer's use of the farm price method with respect to farm property to which the provisions of section 263A apply, that taxpayer is not required, solely by such use, to use the farm price method with respect to farm property to which the provisions of section 263A do not apply. Thus, for example, assume Farmer A raises fruit trees that have a preproductive period in excess of 2 years and to which the provisions of section 263A, therefore, apply. Assume also that Farmer A raises cattle and is not required to use an accrual method by section 447 or 448(a)(3). Because Farmer A qualifies for the exception in paragraph (a)(2) of this section, Farmer A is not required to capitalize the costs of raising the cattle. Although Farmer A may use the farm price method with respect to the fruit trees, Farmer A is not required to use the farm price method with respect to the cattle. Instead, Farmer A's accounting for the cattle is determined under other provisions of the Code and regulations.

(d) *Election not to have section 263A apply*—(1) *Introduction.* This paragraph (d) permits certain taxpayers to make an election not to have the rules of this section apply to any plant produced in a farming business conducted by the electing taxpayer. The election is a method of accounting under section 446, and once an election is made, it is revocable only with the consent of the Commissioner.

(2) *Availability of the election.* The election described in this paragraph (d) is available to any taxpayer that produces plants in a farming business, except that no election may be made by a corporation, partnership, or tax shelter required to use the accrual method under section 447 or 448(a)(3). Moreover, the election does not apply to the costs of planting, cultivation, maintenance, or development of a citrus or almond grove (or any part thereof) incurred prior to the close of the fourth taxable year beginning with the taxable year in which the trees were planted in the permanent grove (including costs incurred prior to the permanent planting). If a citrus or almond grove is

planted in more than one taxable year, the portion of the grove planted in any one taxable year is treated as a separate grove for purposes of determining the year of planting.

(3) *Time and manner of making the election*. A taxpayer makes the election under this paragraph (d) by not capitalizing the preproductive period costs of producing property in a farming business and by applying the special rules in paragraph (d)(4) of this section, on its timely filed original return (including extensions) for the first taxable year in which the taxpayer is otherwise required to capitalize preproductive period costs under section 263A. Thus, in order to be treated as having made the election under this paragraph (d), it is necessary to report both income and expenses in accordance with the rules of this paragraph (d) (e.g., it is necessary to use the alternative depreciation system as provided in paragraph (d)(4)(ii) of this section). Thus, for example, a farmer who deducts preproductive period costs that are otherwise required to be capitalized under section 263A but fails to use the alternative depreciation system under section 168(g)(2) for applicable property placed in service has not made an election under this paragraph (d) and is not in compliance with the provisions of section 263A. In the case of a partnership or S corporation, the election must be made by the partner, shareholder, or member.

(4) *Special rules*. If the election under this paragraph (d) is made, the taxpayer is subject to the special rules in this paragraph (d)(4).

(i) *Section 1245 treatment*. The plant produced by the taxpayer is treated as section 1245 property and any gain resulting from any disposition of the plant is recaptured (i.e., treated as ordinary income) to the extent of the total amount of the deductions that, but for the election, would have been required to be capitalized with respect to the plant. In calculating the amount of gain that is recaptured under this paragraph (d)(4)(i), a taxpayer may use the farm price method or another simplified method permitted under these regulations in determining the deductions that otherwise would have been capitalized with respect to the plant.

(ii) *Required use of alternative depreciation system*. If the taxpayer or a related person makes an election under this paragraph (d), the alternative depreciation system (as defined in section 168(g)(2)) must be applied to all property used predominantly in any farming business of the taxpayer or related person and placed in service in any taxable year during which the election is in effect. The requirement to use the alternative depreciation system by reason of an election under this paragraph (d) will not prevent a taxpayer from making an election under section 179 to deduct certain depreciable business assets.

(iii) *Related person*—(A) *In general*. For purposes of this paragraph (d)(4), related person means—

(*1*) The taxpayer and members of the taxpayer's family;

(*2*) Any corporation (including an S corporation) if 50 percent or more of the stock (in value) is owned directly or indirectly (through the application of section 318) by the taxpayer or members of the taxpayer's family;

(*3*) A corporation and any other corporation that is a member of the same controlled group (within the meaning of section 1563(a)(1)); and

(*4*) Any partnership if 50 percent or more (in value) of the interests in such partnership is owned directly or indirectly by the taxpayer or members of the taxpayer's family.

(B) *Members of family*. For purposes of this paragraph (d)(4)(iii), *members of the taxpayer's family*, and *members of family* (for purposes of applying section 318(a)(1)), means the spouse of the taxpayer (other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance) and any of the taxpayer's children (including legally adopted children) who have not reached the age of 18 as of the last day of the taxable year in question.

(5) *Examples*. The following examples illustrate the provisions of this paragraph (d):

*Example 1*. (i) Farmer A, an individual, is engaged in the trade or business of farming. Farmer A grows apple trees that have a preproductive period greater than 2 years. In addition, Farmer A grows and harvests wheat and other grains. Farmer A elects under this paragraph (d) not to have the rules of section 263A apply to the preproductive period costs of growing the apple trees.

(ii) In accordance with paragraph (d)(4) of this section, Farmer A is required to use the alternative depreciation system described in section 168(g)(2) with respect to all property used predominantly in any farming business in which Farmer A engages (including the growing and harvesting of wheat) if such property is placed in service during a year for which the election is in effect. Thus, for example, all assets and equipment (including trees and any equipment used to grow and harvest wheat) placed in service during a year for which the election is in effect must be depreciated as provided in section 168(g)(2).

*Example 2*. Assume the same facts as in *Example 1*, except that Farmer A and members of Farmer A's family (as defined in paragraph (d)(4)(iii)(B) of this section) also own 51 percent (in value) of the interests in Partnership P, which is engaged in the trade or business of growing and harvesting corn. Partnership P is a related person to Farmer A under the provisions of paragraph (d)(4)(iii) of this section. Thus, the requirements to use the alternative depreciation system under section 168(g)(2) also apply to any property used predominantly in a trade or business of farming which Partnership P places in service during a year for which an election made by Farmer A is in effect.

(e) *Exception for certain costs resulting from casualty losses*—(1) *In general*. Section 263A does not require the capitalization of costs that are attributable to the replanting, cultivating, maintaining, and developing of any plants bearing an edible crop for human consumption (including, but not limited to, plants that constitute a grove, orchard, or vineyard) that were lost or damaged while owned by the taxpayer by reason of freezing temperatures, disease, drought, pests, or other casualty (replanting costs). Such replanting costs may be incurred with respect to property other than the property on which the damage or loss occurred to the extent the acreage of the property with respect to which the replanting costs are incurred is not in excess of the acreage of the property on which the damage or loss occurred. This paragraph (e) applies only to the replanting of plants of the same type as those lost or damaged. This paragraph (e) applies to plants replanted on the property on which the damage or loss occurred or property of the same or lesser acreage in the United States irrespective of differences in density between the lost or damaged and replanted plants. Plants bearing crops for human consumption are those crops normally eaten or drunk by humans. Thus, for example, costs incurred with respect to replanting plants bearing jojoba beans do not qualify for the exception provided in this paragraph (e) because that crop is not normally eaten or drunk by humans.

(2) *Ownership*. Replanting costs described in paragraph (e)(1) of this section generally must be incurred by the taxpayer that owned the property at the time the plants were lost or damaged. Paragraph (e)(1) of this section will apply, however, to costs incurred by a person other than the taxpayer that owned the plants at the time of damage or loss if—

(i) The taxpayer that owned the plants at the time the damage or loss occurred owns an equity interest of more than 50 percent in such plants at all times during the taxable year in which the

replanting costs are paid or incurred; and

(ii) Such other person owns any portion of the remaining equity interest and materially participates in the replanting, cultivating, maintaining, or developing of such plants during the taxable year in which the replanting costs are paid or incurred. A person will be treated as materially participating for purposes of this provision if such person would otherwise meet the requirements with respect to material participation within the meaning of section 2032A(e)(6).

(3) *Examples.* The following examples illustrate the provisions of this paragraph (e):

*Example 1.* (i) Farmer T grows cherry trees that have a preproductive period in excess of 2 years and produce an annual crop. These cherries are normally eaten by humans. Farmer T grows the trees on a 100 acre parcel of land (parcel 1) and the groves of trees cover the entire acreage of parcel 1. Farmer T also owns a 150 acre parcel of land (parcel 2) that Farmer T holds for future use. Both parcels are in the United States. In 1998, the trees and the irrigation and drainage systems that service the trees are destroyed in a casualty (within the meaning of paragraph (e)(1) of this section). Farmer T installs new irrigation and drainage systems on parcel 1, purchases young trees (seedlings), and plants the seedlings on parcel 1.

(ii) The costs of the irrigation and drainage systems and the seedlings must be capitalized under section 263A. In accordance with paragraph (e)(1) of this section, the costs of planting, cultivating, developing, and maintaining the seedlings during their preproductive period are not required to be capitalized by section 263A.

*Example 2.* (i) Assume the same facts as in *Example 1* except that Farmer T decides to replant the seedlings on parcel 2 rather than on parcel 1. Accordingly, Farmer T installs the new irrigation and drainage systems on 100 acres of parcel 2 and plants seedlings on those 100 acres.

(ii) The costs of the irrigation and drainage systems and the seedlings must be capitalized under section 263A. Because the acreage of the related portion of parcel 2 does not exceed the acreage of the destroyed orchard on parcel 1, the costs of planting, cultivating, developing, and maintaining the seedlings during their preproductive period are not required to be capitalized by section 263A. See paragraph (e)(1) of this section.

*Example 3.* (i) Assume the same facts as in *Example 1* except that Farmer T replants the seedlings on parcel 2 rather than on parcel 1, and Farmer T additionally decides to expand its operations by growing 125 rather than 100 acres of trees. Accordingly, Farmer T installs new irrigation and drainage systems on 125 acres of parcel 2 and plants seedlings on those 125 acres.

(ii) The costs of the irrigation and drainage systems and the seedlings must be capitalized under section 263A. The costs of planting, cultivating, developing, and maintaining 100 acres of the trees during their preproductive period are not required to be capitalized by section 263A. The costs of planting, cultivating, maintaining, and developing the additional 25 acres are, however, subject to capitalization. See paragraph (e)(1) of this section.

(4) *Special rule for citrus and almond groves*—(i) *In general.* The exception in this paragraph (e) is available with respect to a citrus or almond grove, notwithstanding the taxpayer's election not to have section 263A apply (described in paragraph (d) of this section).

(ii) *Example.* The following example illustrates the provisions of this paragraph (e)(4):

*Example.* (i) Farmer A, an individual, is engaged in the trade or business of farming. Farmer A grows citrus trees that have a preproductive period of 5 years. Farmer A elects, under paragraph (d) of this section, not to have section 263A apply to the preproductive period costs. This election, however, is unavailable with respect to the preproductive period costs of a citrus grove incurred within the first 4 years after the trees were planted. See paragraph (d)(2) of this section. After the citrus grove has become productive in marketable quantities, the citrus grove is destroyed by a casualty within the meaning of paragraph (e)(1) of this section.

(ii) Farmer A must capitalize the preproductive period costs incurred before the close of the fourth taxable year beginning with the year in which the trees were permanently planted. As a result of the election not to have section 263A apply to preproductive period costs, Farmer A may deduct the preproductive period costs incurred in the fifth year. The costs of replanting, cultivating, maintaining, and developing the trees destroyed by a casualty are exempted from capitalization under this paragraph (e).

(f) *Effective date and transition rule.* In the case of property that is not inventory in the hands of the taxpayer, this section is generally effective for costs incurred on or after August 22, 1997, in taxable years ending after such date. In the case of inventory property, this section is generally effective for taxable years beginning after August 22, 1997. However, taxpayers in compliance with § 1.263A–4T in effect prior to August 22, 1997 (See 26 CFR part 1 edition revised as of April 1, 1997.), and other administrative guidance, that continue to comply with § 1.263A–4T in effect prior to August 22, 1997 (See 26 CFR part 1 edition revised as of April 1, 1997.), and other administrative guidance, will not be required to apply these new temporary rules until final regulations are published in the **Federal Register**.

**§ 1.471–6 [Amended]**

**Par. 7.** Section 1.471–6 is amended as follows:

1. Adding two sentences to the end of paragraph (c).

2. Removing the second sentence in paragraph (d) and adding two sentences in its place.

3. Revising the last three sentences of paragraph (f).

The additions and revision read as follows:

**§ 1.471–6 Inventories of livestock raisers and other farmers.**

* * * * *

(c) * * * In addition, these inventory methods may be used to account for the costs of property produced in a farming business that are required to be capitalized under section 263A regardless of whether the property being produced is otherwise treated as inventory by the taxpayer, and regardless of whether the taxpayer is otherwise using the cash or an accrual method of accounting. Thus, for example, the unit livestock method may be utilized by a taxpayer in accounting under section 263A for the costs of raising animals that will be used for draft, breeding, or dairy purposes.

(d) * * * If this method of valuation is used, it generally must be applied to all property produced by the taxpayer in the trade or business of farming, except as to livestock accounted for, at the taxpayer's election, under the unit livestock method of accounting. However, see § 1.263A–4T(c)(3) for an exception to this rule. * * *

* * * * *

(f) * * * Except as otherwise provided in this paragraph, once established, the unit prices and classifications selected by the taxpayer must be consistently applied in all subsequent taxable years. For taxable years beginning after August 22, 1997, a taxpayer using the unit livestock method must, however, annually reevaluate the unit livestock prices and must adjust the prices upward to reflect increases in the costs of raising livestock. The consent of the Commissioner is not required to make such upward adjustments. No other changes in the classification of animals or unit prices shall be made without the consent of the Commissioner. See § 1.263A–4T for rules regarding the computation of costs for purposes of the unit livestock method.

* * * * *

**Michael P. Dolan,**

*Acting Commissioner of Internal Revenue.*

Approved: July 28, 1997.

**Donald C. Lubick,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 97–21772 Filed 8–21–97; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## 29 CFR Part 1904

## Recording and Reporting Occupational Injuries and Illnesses; Office of Management and Budget Control Numbers Under the Paperwork Reduction Act

**AGENCY:** Occupational Safety and Health Administration, Department of Labor.

**ACTION:** Final rule.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) is adding a new section to its regulation for recording and reporting of occupational injuries and illnesses (29 CFR part 1904). The new section will be used to consolidate and display all of the control numbers assigned by the Office of Management and Budget (OMB) for ''approved'' information collection requirements in Part 1904. None of the requirements are new; they have been promulgated by OSHA at various times over the past 25 years. The display of OMB control numbers is required under the implementing rules and regulations of OMB and under the Paperwork Reduction Act of 1995

**DATE:** Effective August 22, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen A. Newell, Office of Statistics, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3507; 200 Constitution Avenue, NW, Washington, DC 20210 (202–219–6463, FAX 202–219–5161).

**SUPPLEMENTARY INFORMATION:**

### I. Background

OSHA has a number of provisions within its regulation for recording and reporting occupational injuries, illnesses and deaths that require employers to collect or prepare information. These types of provisions are broadly classified as ''information collection requirements.'' All information collection requirements are subject to review and approval by OMB on not more than a three-year cycle. It should be noted that OHSA cannot impose a penalty on employers for violating collection of information (recordkeeping, reporting, etc.) requirements if the agency has failed to obtain OMB approval of the requirement. When OMB approves collection of information requirements, it issues a ''control number'' for the collection of information provision. All agencies are required to display [show to the public] the OMB control numbers so the public will know that OMB has given the agency approval to require the information [report, record, documentation, form, etc.] to be collected. In the past, OSHA has displayed the relevant OMB control numbers of the injury and illness recordkeeping requirements by printing them at the end of each section in part 1904 to which they were pertained. However, to enable the public to easily and readily identify all of the collection of information requirements, OSHA is dedicating one section in part 1904 (1904.30) to list the sections with information collection requirements and show the appropriate OMB control numbers. As a result of this new format, the parenthetical notes and approval/control numbers now printed at the end of the individual sections of Part 1904 can be removed.

None of the specific requirements to collect and provide information is new. The control numbers listed in this document were assigned previously by OMB; but not necessarily published in the regulations. This document makes no substantive change to the current OMB information collection budget or to any regulatory provision.

### II. Exemption From Notice and Comment Procedures

This action is a rule of agency procedure and practice and is not subject to the rulemaking requirements of the Administrative Procedures Act. 5 U.S.C. § 553(b)(A). It does not affect the substantive requirements or coverage of the regulations themselves. Furthermore, this document does not modify or revoke existing rights or obligations, nor does it establish new ones. With this action, the Agency is only providing information. OSHA, therefore, finds that notice and public procedure are impracticable and unnecessary within the meaning of 5 U.S.C. 553(b)(3)(B).

### III. Exemption From Delayed Effective Date Requirement

Under 5 U.S.C. 553, OSHA finds that there is good cause for making this Document effective upon publication in the **Federal Register.** This display of control numbers simply provides additional information on the existing regulatory burden without increasing that burden.

### List of Subjects in 29 CFR Part 1904

Reporting and recordkeeping requirements.

Accordingly, pursuant to sections 8 and 24 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 673), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 5 U.S.C. 553, 29 CFR Part 1904 is hereby amended as set forth below.

Signed in Washington, D.C., this 5th day of August, 1997.

**Gregory R. Watchman,**

*Acting Assistant Secretary of Labor.*

## PART 1904—[AMENDED]

1. The authority citation for Part 1904 continues to read as follows:

**Authority**: Secs. 8, 24, Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 673), Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033) or 6–96 (62 FR 111), as applicable.

Section 1904.7, 1904.8 and 1904.17 are also issued under 5 U.S.C. 553.

2. Section 1904.30 is added to read as follows:

### § 1904.30 OMB control numbers under the Paperwork Reduction Act

The following sections each contain a collection of information requirement which has been approved by the Office of Management and Budget under the control number listed.

| 29 CFR citation | OMB control No. |
|---|---|
| 1904.2 | 1218–0176 |
| 1904.4–7 | 1218–0176 |
| 1904.8 | 1218–0007 |
| 1904.17 | 1218–0214 |
| 1904.21 | 1220–0045 |

3. Remove the parenthetical note relating to the OMB control number that appears at the end of each of the following sections: 1904.2; 1904.4; 1904.5; 1904.6; 1904.15; 1904.21.

[FR Doc. 97–22380 Filed 8–21–97; 8:45 am]

BILLING CODE 4510–26–M

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–300527; FRL–5736–9]**

**RIN 2070–AB78**

## Pyridate; Pesticide Tolerances for Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a time-limited tolerance for combined residues of pyridate in or on chickpeas . This action is in response to EPA's granting of an emergency exemption

under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on chickpeas. This regulation establishes a maximum permissible level for residues of pyridate in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on December 31, 1998.

**DATES:** This regulation is effective August 22, 1997. Objections and requests for hearings must be received by EPA on or before October 21, 1997.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number, [OPP–300527], 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–300527], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300527]. 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: Andrew Ertman, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9367, e-mail: ertman.andrew@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for combined residues of the herbicide pyridate (*O*- (6-chloro-3-phenyl-4-pyridazinyl)-*S*-octyl-carbonothioate), the metabolite 6-chloro-3-phenyl-pyridazine-4-ol and conjugates of 6-chloro-3-phenyl-pyridazine-ol, expressed as pyridate, in or on chickpeas at 0.1 part per million (ppm). This tolerance will expire and is revoked on December 31, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

## I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq*., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq*. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

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

## II. Emergency Exemption for Pyridate on Chickpeas and FFDCA Tolerances

The applicants state that chickpea growers in the irrigated region of central Washington and north-central Oregon face an immediate crisis with broadleaf weeds infesting their chickpea crop. The problem occurred when there was a period of unusually cool, wet weather after planting in late March to mid-April, causing a delay in both crop and weed emergence. This delay, coupled with the breakdown in the pre-emergence herbicide used, created a condition where broadleaf weeds were competing on an equal basis with the chickpea crop. Chickpeas are poor competitors with broadleaf weeds. The applicants state that the pre-emergence herbicides that were used (Sonalan and Prowl) have a shorter period of soil activity than the most effective pre-emergence herbicide available (Pursuit). However, because crop rotation includes potatoes, Pursuit could not be used.

Because there are no post-emergence herbicides that are currently registered for use on chickpeas to control broadleaf weeds, the applicants assert that left uncontrolled, the broadleaf weed infestation could reduce crop yields by 50 to 60%. EPA has authorized under FIFRA section 18 the use of pyridate on

chickpeas for control of broadleaf weeds in Washington and Oregon. After having reviewed the submission, EPA concurs that emergency conditions exist for these states.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of pyridate in or on chickpeas. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on December 31, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on chickpeas after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether pyridate meets EPA's registration requirements for use on chickpeas or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of pyridate by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any States other than Washington and Oregon to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for pyridate, 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. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

### *A. Toxicity*

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

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

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

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute'', ''short-term'', ''intermediate term'', and ''chronic'' risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional

degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

*B. Aggregate Exposure*

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. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (children 1-6 years old) was not regionally based.

## IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of pyridate and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for combined residues of pyridate on chickpeas at 0.1 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

*A. Toxicological Profile*

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

1. *Chronic toxicity*. EPA has established the RfD for pyridate at 0.11 milligrams/kilogram/day (mg/kg/day). This RfD is based on a two year chronic feeding study in rats with a NOEL of 10.8 mg/kg/day and an uncertainty factor of 100 based on body weight depression in the males at the lowest effect level (LEL) of 67.5 mg/kg/day. The 3-generation reproduction study was considered co-critical with a NOEL of 10.8 mg/kg/day and an lowest observed effect level (LOEL) of 67.5 mg/kg/day. Depressed maternal and pup body weight gains were observed at the LOEL.

2. *Carcinogenicity*. Pyridate has not been to the Office of Pesticide Program's Cancer Peer Review Committee. However, mouse and rat oncogenicity studies indicate that pyridate was negative in both species for carcinogenic effects.

*B. Exposures and Risks*

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.462) for the combined residues of pyridate (*O*- (6-chloro-3-phenyl-4-pyridazinyl)-*S*-octyl-carbonothioate), the metabolite 6-chloro-3-phenyl-pyridazine-4-ol and conjugates of 6-chloro-3-phenyl-pyridazine-ol, expressed as pyridate, in or on a variety of raw agricultural commodities including cabbage, corn (grain, fodder, forage, silage) and peanuts (nutmeats, hulls), all at 0.03 ppm. Risk assessments were conducted by EPA to assess dietary exposures and risks from pyridate as follows:

*Chronic exposure and risk.* In conducting this chronic dietary risk assessment, EPA has made very conservative assumptions -- 100% of chickpeas and all other commodities having pyridate tolerances will contain residues and those residues would be at the level of the tolerance -- which result in an overestimate of human dietary exposure. Thus, in making a safety determination for this tolerance, EPA is taking into account this conservative exposure assessment.

The existing pyridate tolerances (published, pending, and including the necessary Section 18 tolerance(s)) result in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to the following percentages of the RfD:

U.S. population at <1.0%; nursing infants at <1.0%; non-nursing infants (<1 year old) at <1.0%; children (1-6 years old) at <1.0%; and, children (7-12 years old) at <1.0%

The subgroups listed above are: (1) the U.S. population (48 states); (2) those for infants and children; and, (3) the other subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 states).

2. *From drinking water.* Based on information available to the Agency, pyridate is not persistent and not mobile. There is no established Maximum Contaminant Level for residues of (pyridate) in drinking water. No health advisory levels for pyridate in drinking water have been established.

*Chronic exposure and risk.* Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related

exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause pyridate 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 pyridate in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary exposure.* Pyridate is not registered for any residential uses at this time. Therefore, no non-dietary, non-occupational exposure is anticipated.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

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

EPA does not have, at this time, available data to determine whether pyridate 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, pyridate 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 pyridate has a common mechanism of toxicity with other substances.

### *C. Aggregate Risks and Determination of Safety for U.S. Population*

1. *Acute risk.* An acute aggregate risk is not required for pyridate as no acute toxicity endpoint has been identified. There are also no non-dietary non-occupational exposures. The Agency acknowledges the potential for exposure to pyridate in drinking water, but does not expect that exposure would result in an aggregate (margin of exposure) MOE (food plus water) that would exceed the Agency's level of concern for acute dietary exposure.

2. *Chronic risk.* Using the conservative TMRC exposure assumptions, and taking into account the completeness and reliability of the toxicity data, EPA has concluded that aggregate exposure to pyridate from food will utilize <1.0% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to pyridate 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 pyridate residues.

### *D. Aggregate Risks and Determination of Safety for Infants and Children*

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

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

b. *Developmental toxicity studies.* In the developmental study in rats, the maternal (systemic) NOEL was 165 mg/kg/day, based on mortality and decreased body weight at the LOEL of 400 mg/kg/day. The developmental (fetal) NOEL was 165 mg/kg/day, based on increased incidence of missing and/or unossified sternabrae and decreased

fetal body weight at the LOEL of 400 mg/kg/day.

In the developmental toxicity study in rabbits, the maternal (systemic) NOEL was 300 mg/kg/day, based on body weight depression at the LOEL of 600 mg/kg/day. The developmental (pup) NOEL was 600 mg/kg/day, the highest dose tested.

c. *Reproductive toxicity study*. In the 3-generation reproductive toxicity study in rats, the maternal (systemic) NOEL was 10.8 mg/kg/day, based on body weight depression at the LOEL of 67.5 mg/kg/day. The developmental/reproductive (pup) NOEL was 10.8 mg/kg/day, based on body weight loss at the LOEL of 67.5 mg/kg/day.

d. *Pre- and post-natal sensitivity*. The toxicological data base for evaluating pre- and post-natal toxicity for pyridate is complete with respect to current data requirements. There are no pre- or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 3-generation rat reproductive toxicity study. Based on the developmental and reproductive toxicity studies discussed above, there does not appear to be an extra sensitivity for pre- or post-natal effects.

e. *Conclusion*. EPA concludes that reliable data support use of the standard 100-fold margin of exposure/uncertainty factor and that an additional margin/factor is not needed to protect infants and children.

2. *Chronic risk*. Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to pyridate from food will utilize less than 1% of the RfD for 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 pyridate in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to pyridate residues.

## V. Other Considerations

### *A. Metabolism In Plants and Animals*

The nature of the pyridate residue in plants and ruminants is adequately understood. The total toxic residue consists of pyridate (*O*- (-chloro-3-phenyl-4-pyridazinyl) -*S*-octyl-carbonothioate), its metabolite 6-chloro-3-phenyl-pyridazine-4-ol (aka CL9673), and conjugates of that metabolite, all expressed as pyridate. .

### *B. Analytical Enforcement Methodology*

A total residue method using UV—HPLC is available for residue data gathering and enforcement purposes. The method has been adequately validated by recovery data, has passed a successful method trial, and has been forwarded to FDA for publication in PAM-II. The limit of quantitation is 0.03 ppm..

### *C. Magnitude of Residues*

Residues of pyridate, its metabolite 6-chloro-3-phenyl-pyridazine-4-ol and conjugates of that metabolite all expressed as pyridate are not expected to exceed 0.1 ppm in/on chickpeas. Secondary residues are not expected in animal commodities as no feed items are associated with this Section 18 use.

### *D. International Residue Limits*

There are no CODEX, Mexican, or Canadian MRLs established for pyridate in/on chickpeas.

## VI. Conclusion

Therefore, the tolerance is established for combined residues of pyridate (*O*-(6-chloro-3-phenyl-4-pyridazinyl)-*S*-octyl-carbonothioate), the metabolite 6-chloro-3-phenyl-pyridazine-4-ol and conjugates of 6-chloro-3-phenyl-pyridazine-ol, expressed as pyridate in/on chickpeas at 0.1 ppm.

## VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by October 21, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

## VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300527] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

## IX. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d). 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). 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, since these tolerances and exemptions that are established under FFDCA section 408 (l)(6), 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. 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. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

## 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: August 12, 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 180.462 is amended to read as follows:

a. By designating the existing text as paragraph (a) and adding a heading.

b. By adding paragraph (b).

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

Section 180.462, as amended, reads as follows:

### § 180.462 Pyridate; tolerances for residues.

(a) *General* . * * *

(b) *Section 18 emergency exemptions.* A time-limited tolerance is established for the residue of the herbicide pyridate in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. This tolerance will expire and is revoked on the date specified in the following table:

| Commodity | Parts per million | Expiration/ revocation date |
|---|---|---|
| Chickpeas ..... | 0.1 | 12/31/98 |

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

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

[FR Doc. 97–22373 Filed 8–21–97; 8:45 am]

BILLING CODE 6560–50–F

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–300533; FRL–5738–6]**

**RIN 2070–AB78**

## Sethoxydim; Pesticide Tolerances for Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a time-limited tolerance for residues of sethoxydim and its metabolites containing the 2-cyclohexen-1-one moiety in or on horseradish. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on horseradish in Illinois. This regulation establishes a maximum permissible level for residues of sethoxydim in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on September 30, 1998.

**DATES:** This regulation is effective August 22, 1997. Objections and requests for hearings must be received by EPA on or before October 21, 1997.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number, [OPP–300533], 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–300533], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing

requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300533]. 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: Virginia Dietrich, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9359, e-mail: dietrich.virginia@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the herbicide sethoxydim, in or on horseradish at 4 part per million (ppm). This tolerance will expire and is revoked on September 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 Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq*., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq* . The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL-5572-9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

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

## II. Emergency Exemption for Sethoxydim on Horseradish and FFDCA Tolerances

Unprecedented flooding events in the horseradish production areas in Illinois in the last few years have transported seeds and vegetative propagules to previously uninfested fields. Currently registered herbicides, as well as cultural practices (mechanical and hand weeding), do not provide adequate control. Of particular concern was infestation by Johnsongrass. Johnsongrass causes losses by competing with the crop thereby reducing yields. Losses were also realized at the packing houses because of the similarity of horseradish roots to Johnsongrass rhizomes. After having reviewed the submission, EPA concurs that emergency conditions exist for this state. EPA has authorized under FIFRA section 18 the use of sethoxydim on horseradish for control of grass weeds in Illinois.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of sethoxydim in or on horseradish. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on September 30, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on horseradish after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether sethoxydim meets EPA's registration requirements for use on horseradish or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of sethoxydim by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Illinois to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for sethoxydim, 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. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

### *A. Toxicity*

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

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

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

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute'', ''short-term'', ''intermediate term'', and ''chronic'' risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

### *B. Aggregate Exposure*

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. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children.The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a

million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (children from one to six years old) was not regionally based.

## IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of sethoxydim and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of sethoxydim and its 2-cyclohexen-1-one moiety on horseradish at 4 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

### *A. Toxicological Profile*

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

1. *Acute toxicity.* 180 mg/kg/day. For acute dietary risk assessment, the Office of Pesticide Programs selected the developmental NOEL of 180 mg/kg/day from the developmental study in rats. At the developmental lowest observed effect level (LOEL) of 650 mg/kg/day, there were decreased fetal weights, filamentous tail, lack of tail, and delayed ossification. Acute dietary risk will be evaluated for the population subgroup of concern, females 13+ years.

2. *Short - and intermediate - term toxicity.* For short- and intermediate-term Margin of Exposure (MOE) calculations, the Office of pesticide Programs concluded that this risk assessment is not required, based on the lack of any observable effects in a 21-day dermal toxicity study in rabbits at the limit dose (1000 mg/kg/day) and the observation of no adverse effects in a developmental toxicity study in rabbits at 400 mg/kg/day, the highest dose tested (HDT).

3. *Chronic toxicity.* EPA has established the RfD for sethoxydim at 0.09 milligrams/kilogram/day (mg/kg/day). This RfD is based on a 1-year feeding study in dogs (MRID# 00152669) with a NOEL of 8.86 mg/kg/day and an uncertainty factor of 100 based on equivocal anemia in male dogs at the lowest effect level (LEL) of 17.5 mg/kg/day.

4. *Carcinogenicity.* Sethoxydim has not been classified with concern to carcinogenicity by the Office of Pesticide Programs. However, no positive tumor findings have been reported at this time.

### *B. Exposures and Risks*

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.412) for combined residues of sethoxydim and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on a variety of raw agricultural commodities (RACs) at levels ranging from 0.2 ppm to 50 ppm. Among them are tolerances on several RACs of the root and tuber vegetables crop group, of which horseradish is a member: artichoke (3 ppm), carrots (1 ppm), potatoes (4 ppm), sweet potatoes (4 ppm), and sugar beet roots (1 ppm). Various food (40 CFR 185.2800) and feed (40 CFR 186.2800) additive tolerances are also established, at levels up to 75 ppm (peanut soapstock). Risk assessments were conducted by EPA to assess dietary exposures and risks from sethoxydim as follows:

i. *Acute exposure and risk.* The acute dietary (food only) risk assessment used tolerance level residues for all crops with sethoxydim tolerances and assumed 100% crop-treated. A Margin of Exposure (MOE) of 960 was calculated for females aged 13+ years, the population subgroup of concern. That acute dietary (food only) MOE should be viewed as a conservative risk estimate; refinement using percent crop-treated and anticipated residue levels or Monte Carlo analysis would result in a lower dietary exposure estimate. 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.

ii. *Chronic exposure and risk.* In conducting this chronic dietary risk assessment, the Office of Pesticide Programs has made very conservative assumptions which result in a conservative over-estimate of human dietary exposure; 100% of horseradish and all other commodities having tolerances for the regulable residue of sethoxydim will contain residues of same, and at the level of the tolerance. Refinement using anticipated residue values and percent crop-treated data would result in a lower chronic dietary exposure estimate.

The existing sethoxydim regulable residue tolerances (published, pending, and this Section 18 proposed tolerance) result in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to the following percentages of the RfD:

| Population Subgroup | $TMRC_{food}$ (mg/kg/day) | %RfD |
|---|---|---|
| U.S. population (48 states) | 0.033266 | 37% |
| Nursing infants | 0.020447 | 23% |
| Non-nursing infants (<1 year old) | 0.057129 | 63% |
| Children (1-6 years old) | 0.067039 | 74% |
| Children (7-12 years old) | 0.049618 | 55% |
| Southern Region | 0.033782 | 38% |
| Western Region | 0.034829 | 39% |
| Hispanics | 0.039524 | 44% |
| Males (13-19 years old) | 0.033837 | 38% |

The subgroups listed above are: (1) the U.S. population (48 states); (2) those for infants and children; and, (3) the other subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 states).

2. *From drinking water.* Based on information in OPP files, sethoxydim is a non-persistent, but highly mobile compound in soil and water environments. There are no Maximum Contaminant Levels or Health Advisories established for sethoxydim residues in drinking water.

Limited monitoring data of ground water and surface water are available for sethoxydim. Exposure estimates using these data are listed below.

*Adult Exposure: Groundwater*

Sethoxydim Exposure (highest concentration detected in public supply wells) = (1 µg/L) * ($10^{-3}$ mg/µg) ÷ (70 kg body weight) * (2 L/day) = 2.85 x $10^{-5}$ mg/kg/day.

Sethoxydim Exposure (highest concentration detected in ground water) = (42 µg/L) * ($10^{-3}$ mg/µg) ÷ (70 kg body weight) * (2 L/day) = 1.2 x $10^{-3}$ mg/kg/day

*Children's Exposure: Groundwater*

Sethoxydim Exposure (highest concentration detected in public supply wells) = (1 µg/L) * ($10^{-3}$ mg/µg) ÷ (10 kg body weight) * (1 L/day) = 1 x $10^{-4}$ mg/kg/day.

Sethoxydim Exposure (highest concentration detected in ground water) = (42 µg/L) * ($10^{-3}$ mg/µg) ÷ (10 kg body weight) * (1 L/day) = 4.2 x $10^{-3}$ mg/kg/day

*Estimates of Exposure: Surface Water.* The highest concentration of sethoxydim residues detected in a surface water sample was 0.87 µg/L. The same calculations as above for ground water were used to estimate the exposure of adults (2.49 x $10^{-5}$ mg/kg/day) and children (0.9 x $10^{-4}$ mg/kg/day) to sethoxydim residues in surface water.

i. *Acute exposure and risk.* The Office of Pesticide Programs calculates a margin of exposure (MOE) to estimate the acute risk for drinking water, as follows:

Acute MOE = Acute NOEL (mg/kg/day) ÷ Exposure (mg/kg/day)

The acute dietary endpoint is based on the developmental NOEL of 180 mg/kg/day from the developmental study in rats. Using the exposure estimates calculated above, the acute MOEs for adults and children are calculated to be > 40,000.

Using the surface water exposure estimates calculated above, the acute MOEs for adults and children are calculated to be > 1.8 million.

ii. *Chronic exposure and risk.* Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause sethoxydim 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 sethoxydim 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.

Using the surface water exposure estimates calculated above, the chronic risks are calculated to be < 1% of the RfD for both adults and children.

3. *From non-dietary exposure.* Sethoxydim is currently registered for use on the following residential non-food sites: flowering plants, recreational areas, and buildings/structures (non-agricultural - outdoor). These residential uses comprise a short- and intermediate-term exposure scenario, but do not comprise a chronic exposure scenario. Since the TESC did not identify a short-term, intermediate-term, or chronic toxicity non-dietary endpoint, a short- and intermediate-term aggregate risk assessment is not required for this Section 18 action.

*Short- and intermediate-term exposure and risk.* The Office of Pesticide Programs determined that a risk assessment for short- and intermediate term exposure is not appropriate since no adverse effects were noted in toxicity studies conducted for this duration of exposure

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

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

EPA does not have, at this time, available data to determine whether sethoxydim has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, sethoxydim does not appear to produce

a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that sethoxydim has a common mechanism of toxicity with other substances.

*C. Aggregate Risks and Determination of Safety for U.S. Population*

1. *Acute risk.* The aggregate (food + water) MOE value is and is 935, based on an $MOE_{food}$ of 960 and a conservative $MOE_{water}$ of 40,000. This aggregate MOE value does not exceed the Agency's level of concern for acute dietary exposure.

2. *Chronic risk.* Using the conservative TMRC exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, EPA has concluded that chronic aggregate dietary exposure (food + water) to sethoxydim will utilize 38% (37% from food + ≤ 1% from water) of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Residential (outdoor) usage of sethoxydim does not comprise a chronic exposure scenario. EPA concludes that there is a reasonable certainty that no harm will result from chronic aggregate exposure to sethoxydim residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus short- and intermediate-term exposure scenarios from indoor and outdoor residential uses. Since the Office of Pesticide Programs did not identify a short-term, intermediate-term, or chronic toxicity non-dietary endpoint, a short- and intermediate-term aggregate risk assessment was not conducted for this duration of exposure.

*D. Aggregate Cancer Risk for U.S. Population*

Sethoxydim has not been classified by the Agency's Cancer Peer Review Committee. However, no positive tumor findings have been reported at this time in the evaluation of the cancer study in mice or the preliminary evaluation of the rat study.

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

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of sethoxydim, 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 maternal pesticide exposure during gestation. 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 100-fold safety factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold safety 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 safety factor.

ii. *Developmental toxicity studies*— a. *Rats.* In the developmental toxicity study in rats, the maternal (systemic) NOEL was 180 mg/kg/day, based on irregular gait, decreased activity, excessive salivation and anogenital staining at the LOEL of 650 mg/kg/day. The developmental (pup) NOEL was 180 mg/kg/day, based on decreased fetal weights, filamentous tail, lack of tail, and delayed ossification at the LOEL of 650 mg/kg/day.

b. *Rabbits.* In the developmental toxicity study in rabbits, the maternal (systemic) NOEL was 320 mg/kg/day, based on a 37% reduction in body weight gain without significant differences in group mean body weights and food consumption at the LOEL of 400 mg/kg/ day. The developmental (pup) NOEL was ι 400 mg/kg/day (HDT).

iii. *Reproductive toxicity study*— *Rats.* In the 2-generation reproductive toxicity study in rats, the maternal (systemic) and reproductive (pup) NOEL was ≈ 150 mg/kg/day (HDT). There were no indications of toxicity, dose-related effects on fertility or difficult deliveries in either parental generation.

iv. *Pre- and post-natal sensitivity.* The toxicological data base for evaluating pre- and post-natal toxicity for sethoxydim is complete with respect to current data requirements.

The available data indicate that no developmental toxicity was observed in the rabbit study at the highest dose tested (400 mg/kg/day). Maternal toxicity was observed in the rabbit at the highest dose tested, and consisted of significant reductions in body weight gain and food consumption.

In the developmental study in rats, developmental toxicity was observed in the presence of significant maternal toxicity at a high dose level (650 mg/kg/day).

There was no parental or reproductive toxicity observed in a multi-generation reproductive toxicity study in rats at doses up to 150 mg/kg/day (HDT).

These data, taken together, suggest minimal concern for developmental or reproductive toxicity and do not indicate any extra pre- or post-natal sensitivity. Thus, these data support use of the standard uncertainty factor of 100. An additional safety factor is not needed to protect infants and children.

v. *Conclusion.* These data, taken together, suggest minimal concern for developmental or reproductive toxicity and do not indicate any extra pre- or post-natal sensitivity. Thus, these data support use of the standard uncertainty factor of 100. An additional safety factor is not needed to protect infants and children.

2. *Acute risk.* As calculated above, the acute dietary (food + water) MOE for females 13+ years (accounts for both maternal and fetal exposure) is 935, based on an $MOE_{food}$ of 960 and a conservative $MOE_{water}$ of 40,000. This dietary MOE does not exceed the Agency's level of concern. Further, this MOE should be viewed as a conservative risk estimate; data refinement and the use of Monte Carlo analysis would result in a lower acute aggregate exposure estimate. HED concludes that there is a reasonable certainty that no harm will result to infants and children from acute aggregate exposure to sethoxydim regulable residue.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has calculated that the percentage of the RfD that will be utilized by dietary (food only) exposure to the sethoxydim regulable residue ranges from 23% for nursing infants < 1 year old, up to 74% for children 1-6 years old. As calculated above, the percentage of the RfD that will be utilized by dietary (water) exposure ranges from < 1 to 5% from

ground water and <1% from surface water. Thus, the chronic aggregate (food + water) risk ranges from ≈ 24-29% for nursing infants < 1 year old, to ≈ 75-80% for children 1-6 years old. It has been determined by HED that residential uses do not comprise a chronic exposure scenario, and thus will not contribute to chronic aggregate risk. 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 sethoxydim in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to sethoxydim residues.

## V. Other Considerations

### *A. Metabolism In Plants and Animals*

The nature of the residue in plants and animals is adequately understood. The residue of concern is the combined residues of sethoxydim and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide), as specified in 40 CFR 180.412.

### *B. Analytical Enforcement Methodology*

Adequate enforcement methodology (GLC/FPD-S) is available (Method I, Pesticide Analytical Manual, Vol. II) to enforce the tolerance expression.

### *C. Magnitude of Residues*

Combined residues of sethoxydim and its regulated metabolites are not expected to exceed 4 ppm in/on horseradish as a result of this Section 18 use. A time-limited tolerance should be established for the regulable residue in/on horseradish at 4 ppm. There are no processed commodities from horseradish. Secondary residues are not expected in animal commodities as a result of this Section 18 use, as no livestock feed items are associated with horseradish.

### *D. International Residue Limits*

There are no Codex residue limits established for sethoxydim, and no Canadian or Mexican residue limits for sethoxydim use on horseradish. Harmonization is thus not an issue for this Section 18 action.

### *E. Rotational Crop Restrictions.*

There are no rotational crop restrictions associated with this use, and none are required As stated previously, sethoxydim is a non-persistent, highly mobile compound in soil and water environments.

## VI. Conclusion

Therefore, the tolerance is established for residues of sethoxydim and its metabolites containing the 2-cyclohexen-1-one moiety in or on horseradish at 4 ppm.

## VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by October 21, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

## VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300533] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

## IX. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408(l)(6). 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). 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, since these tolerances and exemptions that are established under FFDCA section 408 (l)(6), 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. 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. The factual basis for the Agency's generic certification for tolerance acations published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

## 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: August 15, 1997.

**Peter Caulkins,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

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

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

2. In § 180.412, by adding text to paragraph (b) to read as follows:

### § 180.412 Sethoxydim: tolerance for residues.

* * * * *

(b) *Section 18 emergency exemptions.* A time-limited tolerance is established for combined residues of the herbicide sethoxydim and its metabolites containing the 2-cyclohexen-1-one moiety, calculated as the herbicide in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. This tolerance will expire and is revoked on the date specified in the following table:

| Commodity | Parts per million | Expiration/revocation date |
|---|---|---|
| Horseradish | 4 | September 30, 1998 |

* * * * *

[FR Doc. 97–22377 Filed 8–21–97; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–300529; FRL–5737–7]**

**RIN 2070–AB78**

## Chlorfenapyr; Pesticide Tolerances for Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes time-limited tolerances for chlorfenapyr in or on cottonseed; cotton gin byproducts; milk; milk fat; meat of cattle, goats, hogs, horses, and sheep; fat of cattle, goats, hogs, horses, and sheep; and meat byproducts of cattle, goats, hogs, horses and sheep. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on cotton. This regulation establishes maximum permissible level for residues of chlorfenapyr in/on these food 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 are revoked on July 31, 1999.

**DATES:** This regulation is effective August 22, 1997. Objections and requests for hearings must be received by EPA on or before October 21, 1997.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number, [OPP–300529], 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–300529], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300529]. 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: Daniel Rosenblatt, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9375, e-mail: rosenblatt.dan@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 the insecticide chlorfenapyr in or on cottonseed at 0.5 parts per million (ppm); cotton gin byproducts at 2.0 ppm; milk at 0.01 ppm; milk fat at 0.15 ppm; meat of cattle, goats, hogs, horses, and sheep at 0.01 ppm; fat of cattle, goats, hogs, horses, and sheep at 0.10 ppm; and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.3 ppm. These tolerances will expire and are revoked on July 31, 1999. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

## I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq* . The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

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

## II. Emergency Exemption for Chlorfenapyr on Cotton and FFDCA Tolerances

Beet armyworm has infested cotton fields to a high degree in recent growing seasons. EPA received submissions from Texas, Mississippi, Alabama, Arkansas, Florida, Georgia, Louisiana, South Carolina, and California for a section 18 exemption for the use of the unregistered pesticide chlorfenapyr to address the problem. The resistant tobacco budworm is also negatively affecting yields in these states. EPA has reviewed the submissions and has concluded that these pest situations represent urgent and non-routine problems. Therefore, EPA has authorized under FIFRA section 18 the use of the new pesticide chlorfenapyr on cotton for control of beet armyworm and resistant tobacco budworm in the listed states.

As part of its assessment of these emergency exemptions, EPA assessed the potential risks presented by residues of chlorfenapyr in or on cottonseed; cotton gin byproducts; milk; milk fat; meat of cattle, goats, hogs, horses, and sheep; fat of cattle, goats, hogs, horses, and sheep; and meat byproducts of cattle, goats, hogs, horses, and sheep. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on July 31, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on cottonseed; cotton gin byproducts; milk; milk fat; meat of cattle, goats, hogs, horses, and sheep; fat of cattle, goats, hogs, horses, and sheep; and meat byproducts of cattle, goats, hogs, horses, and sheep after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions EPA has not made any decisions about whether chlorfenapyr meets EPA's registration requirements for use on cotton or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of chlorfenapyr by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any States other than previously listed to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for chlorfenapyr, 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. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

### *A. Toxicity*

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

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

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

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute'', ''short-term'', ''intermediate term'', and ''chronic'' risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure only are applicable since there are no residential uses of chlorfenapyr. For cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

### *B. Aggregate Exposure*

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. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide

residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (infants less than a year old) was not regionally based.

## IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of chlorfenapyr and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of chlorfenapyr in or on cottonseed at 0.5 ppm; cotton gin byproducts at 2.0 ppm; milk at 0.01 ppm; milk fat at 0.15 ppm; meat of cattle, goats, hogs, horses, and sheep at 0.01 ppm; fat of cattle, goats, hogs, horses, and sheep at 0.10 ppm; and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.3 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

### *A. Toxicological Profile*

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

1. *Acute toxicity*. For acute dietary risk assessment, EPA recommends use of a NOEL for chlorfenapyr of 45 mg/kg/day from the rat acute neurotoxicity study. The Lowest Exposure Level (LEL) of 90 mg/kg/day was based on lethargy of the rats on the day of treatment. An MOE of 1,000 is required for all subgroups. An additional modifying factor of 10 was applied because the neurotoxicity study was classified as supplemental.

2. *Short - and intermediate - term toxicity*. For short- and intermediate-term MOE calculations, EPA recommends the use of a NOEL of 100 mg/kg/day from the 28-day dermal toxicity study in rabbits. The LEL of 400 mg/kg/day was based on increased serum cholesterol, increased relative liver weights, and unspecified histological lesions. EPA concludes that an MOE of 1,000 is required.

3. *Chronic toxicity*. EPA has established the RfD for chlorfenapyr at 0.003 milligrams/kilogram/day (mg/kg/day). This RfD is based on an 80-week feeding study in mice with a NOEL of 2.8 mg/kg/day and an LEL of 16.0 mg/kg/day based on brain lesions (both sexes) and scabbing of skin (males) An uncertainty factor of 1,000 was used with an additional modifying factor of 10 due to uncertainties regarding neurological risks in infants and children.

4. *Carcinogenicity*. EPA has classified chlorfenapyr as a Group D (not classifiable as to human carcinogenicity) chemical.

### *B. Exposures and Risks*

1. *From food and feed uses*. Chlorfenapyr is an unregistered pesticide. The manufacturer has submitted registration applications for approval for chlorfenapyr products, however, none have been approved to date. This is the first tolerance-related action associated with this chemical. Risk assessments were conducted by EPA to assess dietary exposures and risks from chlorfenapyr as follows:

i. *Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The acute dietary exposure endpoint of concern for chlorfenapyr is lethargy the day of dosing, which would affect all population subgroups. The acute analysis assumed tolerance level residues for all commodities. For all the population subgroups, the calculated MOE values are greater than 1,125. These MOEs do not represent a level of concern to EPA. Further, it should be noted that if the analysis were to incorporate anticipated residue levels and percent crop-treated, the MOEs would be even larger.

ii. *Chronic exposure and risk*. For the purposes of chronic dietary risk analysis, EPA assumed tolerance level residues and 100% crop treated for all commodities. The Theoretical Residue Contributions (TMRC) attributable to the use of this pesticide in accordance with the section 18 authorizations referenced in this notice are equivalent to RfD contributions that range from 23% for the U.S. population (48 states) to 76% for non-nursing infants less than a year old.

2. *From drinking water*. In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures from the pesticide residues in food and all other non-occupational exposures. The primary non-food sources of exposure the Agency looks at include drinking water (whether from ground or surface water), and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Based on data available to EPA, chlorfenapyr is considered immobile and has a relatively high affinity for soil. The mobility characteristics exhibited by this compound are not those generally associated with compounds found in groundwater. However, the chemical behavior of chlorfenapyr does present surface water concerns. Special models were used by EPA to calculate Tier II Estimated Environmental Concentrations (EECs) to estimate the exposure of chlorfenapyr from surface water. The values represent an upper bound estimate of the concentration in an edge-of-the-field pond with no outlet. The recommended values for drinking water exposure for use in human health risk assessment for surface water are 11 micrograms/L for acute drinking water exposure and 9 micrograms/L for chronic drinking water exposure .

i. *Acute exposure and risk*. EPA developed acute exposure levels for adults and children. For children, the acute exposure from drinking water is calculated to be 0.0011 mg/kg/day (11 micrograms/L x $10^{-3}$ mg/ug x L/day divided by 10 kg). For adults, the acute exposure is calculated to be 0.0003 mg/kg/day.

ii. *Chronic exposure and risk*. The chronic exposure form drinking water to children is calculated to be 30% of the RfD (9 micrograms/L x $10^{-3}$ mg/ug x 1 L/day divided by 10 kg divided by 0.003 mg/kg/day x 100 = 30%). The exposure for the general U.S. population would be 10% of the RfD.

iii. *Short- and intermediate-term exposure and risk*. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. However, since there is no potential residential indoor/outdoor non-dietary non-occupational exposure scenarios for

chlorfenapyr, an aggregate short- and intermediate-term risk assessment is not necessary.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

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

EPA does not have, at this time, available data to determine whether chlorfenapyr 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, chlorfenapyr 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 chlorfenapyr has a common mechanism of toxicity with other substances.

### *C. Aggregate Risks and Determination of Safety for U.S. Population*

1. *Acute risk.* In order to assess aggregate risks, EPA combines the acute MOE calculations for food and water. EPA's processes for determining acute dietary (food only) and surface water exposures are described elsewhere in this notice. The most highly exposed subgroup for chlorfenapyr is infants less than a year old, with a combined dietary and drinking water exposure at 0.0153 mg/kg/day. Using the NOEL of 45 mg/kg/day, produces an aggregate acute risk assessment MOE of 2,900. Therefore, in EPA's judgement, aggregate acute risk to chlorfenapyr does not exceed levels of concern.

2. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to chlorfenapyr from food and water will utilize 33% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is infants and children. See below for a discussion of the analysis of the risks for that subgroup. 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.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. However, since there is no potential residential indoor/outdoor non-dietary non-occupational exposure scenarios for chlorfenapyr, an aggregate short- and intermediate-term risk assessment is not necessary.

### *D. Aggregate Cancer Risk for U.S. Population*

Chlorfenapyr has been classified as a Group D chemical signifying that it is ''not classifiable as to human carcinogenicity.

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

1. *Safety factor for infants and children— i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of chlorfenapyr, 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 maternal pesticide exposure during gestation. 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 100-fold safety factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold 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 safety factor.

ii. *Developmental toxicity studies.* In the rat developmental toxicity study, the maternal (systemic) NOEL was 25 mg/kg/day. The LEL of 75 mg/kg/day was based on decreased body weight gain, decreased relative feed intake, and decreased water consumption. The developmental (pup) NOEL was greater than 225 mg/kg/day (HDT). In the rabbit developmental toxicity study, the maternal (systemic) NOEL was 5 mg/kg/day. The LEL of 15 mg/kg/day was based on decreased body weight gain. The reproductive developmental NOEL was greater than 30 mg/kg/day (HDT).

iii. *Reproductive toxicity study.* From the multigeneration reproductive toxicity study in the rat, the maternal (systemic) NOEL was 5 mg/kg/day. The LEL of 22 mg/kg/day was based on decreased body weight gain (pre-mating). The reproductive developmental NOEL was 5 mg/kg/day.

The LEL of 22 mg/kg/day was based on decreased weight gain during lactation.

iv. *Pre- and post-natal sensitivity.* The pre- and post-natal toxicity data base for chlorfenapyr is complete. EPA notes that the developmental toxicity NOELs of greater than 225 mg/kg/day (HDT in rats) and greater than 30 mg/kg/day (HDT in rabbits) demonstrate that there is no developmental (prenatal) toxicity present at levels which produce maternal effects. Additionally, these developmental NOELs are 75- and 10-fold higher in the rats and rabbits, respectively, than the NOEL of 1.8 mg/kg/day from the 1-year feeding study in dogs (the basis of the RfD).

In the reproductive toxicity study in the rat, the reproductive developmental NOEL (5 mg/kg/day) is equal to the parental NOEL (5 mg/kg/day). Both the pup LEL and the parental LEL of 22 mg/kg/day were based on decreased body weight. This finding suggests that there is no special post-natal sensitivity present in the reproductive study and that young rats have the same sensitivity to chlorfenapyr as adult animals.

v. *Conclusion.* The developmental and reproductive toxicity studies indicate that infants and children have no special sensitivity to chlorfenapyr relative to other population subgroups. An additional safety factor for infants and children is not necessary for the use authorized in association with this tolerance.

2. *Acute risk.* To determine acute dietary and drinking water risks to children, an MOE approach is used where the total acute exposure from the diet and drinking water is compared to the acute dietary endpoint of concern, the NOEL of 45 mg/kg/day. Infants less than a year old are the most highly exposed subgroup and have a combined dietary and drinking water exposure at 0.0153 mg/kg/day which yields an MOE of 2,900. Therefore, in EPA's judgement, the aggregate acute risks to children and infants to chlorfenapyr does not exceed levels of concern.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to chlorfenapyr from food will utilize 45% of the RfD for nursing infants, 106% for non-nursing infants, 91% for children 1-6 years old, and 69% for children 7-12 years old. These figures are quite conservative since TMRC's and 100% crop treated assumptions were used in the assessment. If anticipated residue and refined percent crop-treated data were used, the calculated risk would be much lower. In addition, the RfD of 0.003 mg/kg/day was established using an uncertainty factor (UF) of 1,000. The UF contains an additional modifying factor of 10 due to uncertainties regarding neurological risks in infants and children. It is EPA's best scientific judgment that the aggregate chronic risks posed by chlorfenapyr do not exceed our level of concern.

4. *Short- or intermediate-term risk.* Since there is no potential residential indoor/outdoor non-dietary non-occupational exposure scenarios for chlorfenapyr, an aggregate short- and intermediate-term risk assessment is not necessary.

## V. Other Considerations

### *A. Metabolism In Plants and Animals*

The nature of the residue of chlorfenapyr in plants and ruminants is adequately understood. The residue of concern is the parent compound. For chlorfenapyr dietary risk assessments on ruminant commodities (excluding meat byproducts), residues of parent only will be used. However, chlorfenapyr dietary risk assessments on ruminant meat byproducts should include the two metabolites CL 303,268, and CL 325,195 as well as the parent (CL 303,630). The ruminant meat byproduct risk assessment will use a factor (i.e. ratio parent plus metabolites/parent) multiplied by the parent-based tolerance determined from the residue levels of the three moieties in the ruminant metabolism studies.

### *B. Analytical Enforcement Methodology*

Adequate enforcement methodology is available to enforce the tolerance expression. American Cyanamid has prepared a method for cottonseed, meat, and milk.

### *C. Magnitude of Residues*

Residues of chlorfenapyr are not expected to exceed 0.5 ppm in/on cottonseed as a result of this use. No concentration of parent residues (average level of 0.30 ppm in ginned cottonseed) occurred in crude/refined cottonseed oil or hulls. Therefore, separate tolerances for cottonseed processed commodities are not required. Cotton gin byproduct field trial data have not been submitted. In the absence of these required data, EPA recommends a tolerance of 2.0 ppm of chlorfenapyr residues in/on cotton gin byproducts.

Residues of chlorfenapyr in animal commodities are not expected to exceed: 0.01 ppm in milk; 0.15 ppm in milk fat; 0.01 ppm in meat of cattle, goats, hogs, horses, and sheep; 0.10 ppm in fat of cattle, goats, hogs, horses, and sheep; and 0.3 ppm in meat byproducts of cattle, goats, hogs, horses, and sheep.

### *D. International Residue Limits*

No Codex, Canadian, or Mexican Maximum Residue Limits (MRLs) exist. Therefore, there are no compatibility issues with respect to this action.

## VI. Conclusion

Therefore, tolerances are established for chlorfenapyr in or on cottonseed at 0.5 ppm; cotton gin byproducts at 2.0 ppm; milk at 0.01 ppm; milk fat at 0.15 ppm; meat of cattle, goats, hogs, horses, and sheep at 0.01 ppm; fat of cattle, goats, hogs, horses, and sheep at 0.10 ppm; and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.3 ppm.

## VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by October 21, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of

the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

## VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300529] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

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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 tolerances under FFDCA section 408(1)(6). 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). 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, since these tolerances and exemptions that are established under FFDCA section 408(1)(6), such as the tolerances 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. 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. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

## 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: August 12, 1997.

**James Jones,**

*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 180.513 is added to read as follows:

### § 180.513 Chlorfenapyr; tolerances for residues.

(a) *General.* [Reserved]

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the insecticide chlorfenapyr in connection with use of the pesticide under section 18 emergency exemption granted by EPA. These tolerances will expire and are revoked on the date specified in the following table:

| Commodity | Parts per million | Expiration/revocation date |
|---|---|---|
| Cattle, fat | 0.10 | 7/31/99 |
| Cattle, mbyp | 0.3 | 7/31/99 |
| Cattle, meat | 0.01 | 7/31/99 |
| Cottonseed | 0.5 | 7/31/99 |
| Cotton gin byproducts | 2.0 | 7/31/99 |
| Goats, fat | 0.10 | 7/31/99 |
| Goats, mbyp | 0.3 | 7/31/99 |
| Goats, meat | 0.01 | 7/31/99 |

| Commodity | Parts per million | Expiration/revocation date |
|---|---|---|
| Hogs, fat | 0.10 | 7/31/99 |
| Hogs, mbyp | 0.3 | 7/31/99 |
| Hogs, meat | 0.01 | 7/31/99 |
| Horses, fat | 0.10 | 7/31/99 |
| Horses, mbyp | 0.3 | 7/31/99 |
| Horses, meat | 0.01 | 7/31/99 |
| Milk | 0.01 | 7/31/99 |
| Milk fat | 0.15 | 7/31/99 |
| Sheep, fat | 0.10 | 7/31/99 |
| Sheep, mbyp | 0.3 | 7/31/99 |
| Sheep, meat | 0.01 | 7/31/99 |

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

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

[FR Doc. 97–22396 Filed 8-21-97; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–300538; FRL–5739–4]**

**RIN 2070–AB78**

## Coat Protein of Papaya Ringspot Virus and the Genetic Material Necessary for its Production; Exemption From the Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final Rule.

**SUMMARY:** This rule establishes an exemption from the requirement of a tolerance for residues of the biological pesticide Coat Proteins of Papaya Ringspot Virus and the genetic material necessary for its production in or on all raw agricultural commodities. Cornell University submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act as amended by the Food Quality Protection Act of 1996 requesting the tolerance exemption. This regulation eliminates the need to establish a maximum permissible level for residues of Coat Proteins of Papaya Ringspot Virus and the genetic material necessary for its production.

**DATES:** This regulation is effective August 22, 1997. Objections and requests for hearings must be received by EPA on or before October 21, 1997.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number [OPP–300538], 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–300538], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300538]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

**FOR FURTHER INFORMATION CONTACT:** By mail: Linda Hollis, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7501W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail: Rm. 5th fl., CS#1 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8733, e-mail: hollis.linda@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of April 2, 1997 (62 FR 15689–15690) EPA issued a notice pursuant to section 408(d), of the Federal Food Drug & Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), announcing the filing of a pesticide tolerance petition by Cornell University, Geneva, NY. The notice contained a summary of the petition prepared by the petitioner and this summary contained conclusions and arguments to support its conclusion that the petition complied with the Food Quality Protection Act (FQPA) of 1996. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the biological pest control agent Coat Protein of Papaya Ringspot Virus and the genetic material necessary for its production in or on all raw agricultural commodities.

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

The data submitted in the petition and other material have been evaluated. The toxicology data requirements in support of this exemption from the requirement of a tolerance were satisfied via data waivers from the open scientific literature.

### I. Risk Assessment and Statutory Findings

New section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for 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(c)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include

occupational exposure. Section 408(c)(2)(B) 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...'' EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide us in residential settings.

## II. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Additionally, 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.'' All available information indicates that viral coat proteins in food have no human toxicity and EPA is not aware of any other substances within or outside of the food supply that might have a common mechanism of human toxicity with residues of viral coat proteins produced in plants as part of a plant-pesticide.

Data waivers were requested for acute toxicity, genotoxicity, reproductive and developmental toxicity, subchronic toxicity and chronic toxicity data. The data waivers were accepted based on the long history of mammalianconsumption of the entire plant virus particle in foods, without causing any deleterious human health effects (See OPP–300367A; FRL–5716–6). Virus-infected plants currently are and have always been a part of both the human and domestic animal food supply and there have been no findings which indicate that plant viruses are toxic to humans and other vertebrates. Further, plant viruses are unable to replicate in mammals or other vertebrates, thereby eliminating the possibility of human infection. More importantly, however, this tolerance exemption will apply to that portion of the viral genome coding for the whole coat protein and any subcomponent of the coat protein expressed in the plant. This component alone is incapable of forming infectious particles.

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

## III. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from groundwater or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

1. *Dietary exposure*—a. *Food.* The use of viral coat protein mediated resistance will not result in any new dietary exposure to plant viruses. Entire infectious particles of Papaya Ringspot Virus, including the coat protein component, are found in the fruit, leaves and stems of most plants. Viruses are ubiquitous in the agricutural environment at levels higher than will be present in transgenic plants. Virus infected food plants have historically been a part of the human and domestic animal food supply with no observed adverse effects to human health and infants and children upon consumption. Therefore, the lack of toxicity associated with plant viruses and the history of contamination of the food supply by virus coat proteins provides a scientific rationale for exempting from the requirement of a tolerance transgenic plants expressing virus coat proteins and leads the Agency to conclude that the use of Coat Protein of Papaya Ringspot Virus and the genetic material necessary for its production will not pose a dietary risk of concern under normal conditions. Moreover, there is no evidence which indicates that adverse effects due to aggregate exposure of viral coat proteins (with substances outside the food supply) through dietary, non-food oral, dermal and inhalation occurs. This conclusion is suppported by the EPA's Scientific Advisory Panel's discussion regarding the Agency's Regulatory approach for plant pesticides which concluded:

i. The levels of virus in the agricultural environment are much higher than those levels present in transgenic plants.

ii. The existing contamination of the current food supply provides a scientific rationale for exempting from the requirement of a tolerance transgenic plants which express viral coat proteins.

b. *Drinking water exposure.* Potential non-occupational exposures in drinking water is negligible. Viral coat proteins produced in plants as part of a plant-pesticide are an integral part of the living tissue of the plant. As such, these components are subject to degradation and decay, a process which occurs fairly rapidly. Viral coat proteins produced in plants as part of a plant-pesticide do not persist in the environment or bioaccumulate. The rapid turnover of these substances in the environment limits their ability to present anything other than a very negligible exposure in drinking water drawn from either surface or groundwater sources.

2. *Other non-occupational exposure.* Other non-occupational exposure of engineered coat proteins via residential and indoor uses, e.g., uses around homes, parks, recreation areas, athletic fields and golf courses, will be minimal to non-existent as the coat protein is expressed only within the plant tissues.

a. *Dermal exposure.* Due to the nature of viral coat proteins produced in plants as part of a plant-pesticide, exposure through any route (i.e., dermal, respiratory) other than dietary is unlikely to occur. Physical contact with the plant or raw agricultural food from the plant may present some limited opportunity for dermal exposure. However, on a per person basis, the potential amounts involved in this exposure is negligible in comparison to exposure through the dietary route. Additionally, viral coat proteins produced in plants as part of a plant-pesticide are unlikely to cross the barrier provided by the skin.

b. *Inhalation exposure*. The occurrence of respiratory exposure of viral coat proteins produced in plants as part of a plant-pesticide is negligible in comparison to potential exposure through the dietary route. In some cases, viral coat proteins may be present in pollen, thus affording exposure to those individuals in areas exposed to wind-blown pollen. However, it is unlikely that exposure to the pollen is equivalent to exposure to viral coat proteins produced in plants as part of a plant-pesticide. Viral coat proteins, when present in pollen, will likely be integrated into the tissue of pollen grain and are unlikely to cross the barrier provided by the mucous membrane of the respiratory tract and thus are not additive to dietary exposure. Moreover, exposure through inhalation via wind-blown pollen occurs to the whole virus particle and there is no evidence which suggests that exposure to whole plant viruses by wind-blown pollen results in any adverse effects. Therefore, it is unlikely that exposure to pollen that may contain viral coat proteins produced in plants as part of a plant-pesticide would result in adverse effects.

## IV. Safety Factors

Rather than relying on available animal experimentation data to support a tolerance exemption for viral coat proteins, EPA relied on the long history of safe human consumption of food containing plant viruses as the appropriate information base for this tolerance exemption. Because the EPA did not rely on animal data, determination of appropriate safety factors to be used in a human risk assessment was not considered.

## V. Infants and Children

Consistent with section 408(b)(2)(C) of the FFDCA, EPA has assessed the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. Based on all available information, the Agency concludes that viral coat proteins produced in plants as part of a plant-pesticide are ubiquitous in foods, including those foods consumed by infants and children. Moreover, there is no reason to believe that plant viral coat proteins are likely to occur in different amounts in foods, consumed by children and infants. Children are exposed as part of a normal diet to viral coat proteins and there is no evidence which indicates that viral coat proteins would have a diferent effect on children that on adults. Further, there is no evidence which suggests that such exposure to either adults or infants and children leads to any harm.

## VI. Other Considerations

1. *Endocrine disrupters.* The Agency has no informtion to suggest that Coat Proteins of Papaya Ringspot Virus and the genetic material necessary for its production will have an effect on the immune and endocrine systems. The Agency is not requiring information on the endocrine effects of this biological pesticide at this time; Congress has allowed 3 years after August 3, 1996, for the Agency to implement a screening program with respect to endocrine effects.

2. *Analytical method.* The Agency proposes to establish an exemption from the requirement of a tolerance without any numerical limitation; therefore, the agency has concluded that an analytical method is not required for enforcement purposes for Coat Protein of Papaya Ringspot Virus and the genetic material necessary for its production.

## VII. Determination of Safety for U.S. Population, Infants and Children

For the U.S. population, including infants and children, Papaya Ringspot Virus Coat Protein and the genetic material necessary for its production has no known adverse effects. Extensive use and experience show the safety of foods containing viral coat proteins. There has been no evidence in the many years of human experience with the growing and consumption of food from plants containing viral coat proteins which indicates that adverse effects due to aggregate exposure through the dietary, non-food oral, dermal and inhalation routes occur. Therefore, EPA concludes that there is reasonable certainty that no harm will result to the U.S. population from aggregate exposure to residues of viral coat proteins produced in plants as part of a plant-pesticide including all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because, as discussed above, no toxicity to mammals has been observed for coat protein of Papaya Ringspot Virus and the genetic material necessary for its production. Thus, a tolerance for this Coat Protein of Papaya Ringspot Virus and the genetic material necessary for its production is not necessary to protect the public health. Therefore, 40 CFR part 180 is amended as set forth below.

## VIII. Objections and Hearing Requests

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

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may be disclosed publicly by EPA without prior notice.

## IX. Public Docket

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The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing request, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the Virginia address in Addresses at the beginning of this document.

## X. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. 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). 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 and prior consultation as specified by Executive Order 12875, entitiled 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 additions, since tolerance exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption 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. Nevertheless, the Agency 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. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

## XI. 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 the 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: August 14, 1997.

**Stephen L. Johnson,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

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

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

2. Section 180.1185 is added to subpart D to read as follows:

**§ 180.1185 Coat Protein of Papaya Ringspot Virus and the genetic material necessary for its production; exemption from the requirement of a tolerance.**

An exemption fron the requirement of a tolerance is established for residues of the biological plant pesticide Coat Protein of Papaya Ringspot Virus and the genetic material necessary for its production in or on all food commodities.

[FR Doc. 97–22395 Filed 8-21-97; 8:45 am]

BILLING CODE 6560-50-P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–300539; FRL–5739–5]**

**RIN 2070–AB78**

## Coat Protein of Cucumber Mosaic Virus and the Genetic Material Necessary for its Production; Exemption From the Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:**: Final rule.

**SUMMARY:**: This rule establishes an exemption from the requirement of a tolerance for residues of the biological pesticide Coat Proteins of Cucumber Mosaic Virus and the Genetic Material necessary for its production in or on all raw agricultural commodities. Asgrow Seed Company submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act as amended by the Food Quality Protection Act of 1996 requesting the tolerance exemption. This regulation eliminates the need to establish a maximum permissible level for residues of Coat Proteins of Cucumber Mosaic Virus and the genetic material necessary for its production.

**DATES:**: This regulation is effective August 22, 1997. Objections and requests for hearings must be received by EPA on or before October 21, 1997.

**ADDRESSES:**: Written objections and hearing requests, identified by the docket control number [OPP–300539], 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–300539], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300539]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

**FOR FURTHER INFORMATION CONTACT:**: By mail: Linda Hollis, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7501W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 5th fl., CS#1 2800 Crystal Drive, Arlington, VA 22202, (703) 308-8733. Email: hollis.linda@epamail.epa.gov

**SUPPLEMENTARY INFORMATION:**: In the **Federal Register** of April 2, 1997 (62 FR 15688–15689) EPA issued a notice pursuant to section 408(d), of the Federal Food Drug & Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), announcing the filing of a pesticide tolerance petition by Asgrow Seed Compan, California. The notice contained a summary of the petition prepared by the petitioner and this summary contained conclusions and arguments to support its conclusion that the petition complied with the Food Quality Protection Act (FQPA) of 1996. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the biological pest control agent Coat Protein of Cucumber Mosaic Virus and the genetic material necessary for its production in or on all raw agricultural commodities.

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

The data submitted in the petition and other material have been evaluated. The toxicology data requirements in support of this exemption from the requirement of a tolerance were satisfied via data waivers from the open scientific literature.

## I. Risk Assessment and Statutory Findings

New section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for 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(c)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(c)(2)(B) 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...'' EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide us in residential settings.

## II. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Additionally, 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.'' All available information indicates that viral coat proteins in food have no human toxicity and EPA is not aware of any other substances within or outside of the food supply that might have a common mechanism of human toxicity with residues of viral coat proteins produced in plants as part of a plant-pesticide.

Data waivers were requested for acute toxicity, genotoxicity, reproductive and developmental toxicity, subchronic toxicity and chronic toxicity data. The data waivers were accepted based on the long history of mammalian consumption of the entire plant virus particle in foods, without causing any deleterious human health effects [See OPP–300367A; FRL–5716–6]. Virus-infected plants currently are and have always been a part of both the human and domestic animal food supply and there have been no findings which indicate that plant viruses are toxic to humans and other vertebrates. Further, plant viruses are unable to replicate in mammals or other vertebrates, thereby eliminating the possibility of human infection. More importantly, however, this tolerance exemption will apply to that portion of the viral genome coding for the whole coat protein and any subcomponent of the coat protein expressed in the plant. This component alone is incapable of forming infectious particles.

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

## III. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-

occupational exposures, including drinking water from groundwater or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

1. *Dietary exposure*— a. *Food*. The use of viral coat protein mediated resistance will not result in any new dietary exposure to plant viruses. Entire infectious particles of Cucumber Mosaic Virus, including the coat protein component, are found in the fruit, leaves and stems of most plants. Viruses are ubiquitous in the agricutural environment at levels higher than will be present in transgenic plants. Virus infected food plants have historically been a part of the human and domestic animal food supply with no observed adverse effects to human health and infants and children upon consumption. Therefore, the lack of toxicity associated with plant viruses and the history of contamination of the food supply by virus coat proteins provides a scientific rationale for exempting from the requirement of a tolerance transgenic plants expressing virus coat proteins and leads the Agency to conclude that the use of Coat Protein of Cucumber Mosaic Virus and the genetic material necessary for its production will not pose a dietary risk of concern under normal conditions. Moreover, there is no evidence which indicates that adverse effects due to aggregate exposure of viral coat proteins (with substances outside the food supply) through dietary, non-food oral, dermal and inhalation occurs. This conclusion is suppported by the EPA's Scientific Advisory Panel's discussion regarding the Agency's Regulatory approach for plant pesticides which concluded:

i. The levels of virus in the agricultural environment are much higher than those levels present in transgenic plants.

ii. The existing contamination of the current food supply provides a scientific rationale for exempting from the requirement of a tolerance transgenic plants which express viral coat proteins.

b. *Drinking water exposure*. Potential non-occupational exposures in drinking water is negligible. Viral coat proteins produced in plants as part of a plant-pesticide are an integral part of the living tissue of the plant. As such, these components are subject to degradation and decay, a process which occurs fairly rapidly. Viral coat proteins produced in plants as part of a plant-pesticide do not persist in the environment or bioaccumulate. The rapid turnover of these substances in the environment limits their ability to present anything other than a very negligible exposure in drinking water drawn from either surface or groundwater sources.

2. *Other non-occupational exposure*. Other non-occupational exposure of engineered coat proteins via residential and indoor uses, e.g., uses around homes, parks, recreation areas, athletic fields and golf courses, will be minimal to non-existent as the coat protein is expressed only within the plant tissues.

a. *Dermal exposure*. Due to the nature of viral coat proteins produced in plants as part of a plant-pesticide, exposure through any route (i.e. dermal, respiratory) other than dietary is unlikely to occur. Physical contact with the plant or raw agricultural food from the plant may present some limited opportunity for dermal exposure. However, on a per person basis, the potential amounts involved in this exposure is negligible in comparison to exposure through the dietary route. Additionally, viral coat proteins produced in plants as part of a plant-pesticide are unlikely to cross the barrier provided by the skin.

b. *Inhalation exposure*. The occurrence of respiratory exposure of viral coat proteins produced in plants as part of a plant- pesticide is negligible in comparison to potential exposure through the dietary route. In some cases, viral coat proteins may be present in pollen, thus affording exposure to those individuals in areas exposed to wind-blown pollen. However, it is unlikely that exposure to the pollen is equivalent to exposure to viral coat proteins produced in plants as part of a plant-pesticide. Viral coat proteins, when present in pollen, will likely be integrated into the tissue of pollen grain and are unlikely to cross the barrier provided by the mucous membrane of the respiratory tract and thus are not additive to dietary exposure. Moreover, exposure through inhalation via wind-blown pollen occurs to the whole virus particle and there is no evidence which suggests that exposure to whole plant viruses by wind-blown pollen results in any adverse effects. Therefore, it is unlikely that exposure to pollen that may contain viral coat proteins produced in plants as part of a plant-pesticide would result in adverse effects.

## IV. Safety Factors

Rather than relying on available animal experimentation data to support a tolerance exemption for viral coat proteins, EPA relied on the long history of safe human consumption of food containing plant viruses as the appropriate information base for this tolerance exemption. Because the EPA did not rely on animal data, determination of appropriate safety factors to be used in a human risk assessment was not considered.

## V. Infants and Children

Consistent with section 408(b)(2)(C) of the FFDCA, EPA has assessed the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. Based on all available information, the Agency concludes that viral coat proteins produced in plants as part of a plant-pesticide are ubiquitous in foods, including those foods consumed by infants and children. Moreover, there is no reason to believe that plant viral coat proteins are likely to occur in different amounts in foods, consumed by children and infants. Children are exposed as part of a normal diet to viral coat proteins and there is no evidence which indicates that viral coat proteins would have a diferent effect on children that on adults. Further, there is no evidence which suggests that such exposure to either adults or infants and children leads to any harm.

## VI. Other Considerations

1. *Endocrine disrupters*. The Agency has no information to suggest that Coat Proteins of Cucumber Mosaic Virus and the genetic material necessary for its production will have an effect on the immune and endocrine systems. The Agency is not requiring information on the endocrine effects of this biological pesticide at this time;Congress has allowed 3 years after August 3, 1996, for the Agency to implement a screening program with respect to endocrine effects.

2. *Analytical method*. The Agency proposes to establish an exemption from the requirement of a tolerance without any numerical limitation; therefore, the agency has concluded that an analytical method is not required for enforcement purposes for Coat Protein of Cucumber Mosaic Virus and the genetic material necessary for its production.

## VII. Determination of Safety for U.S. Population, Infants and Children

For the U.S.population, including infants and children, Cucumber Mosaic Virus Coat Protein and the genetic material necessary for its production has no known adverse effects. Extensive use and experience show the safety of foods containing viral coat proteins. There has been no evidence in the many years of human experience with the growing and

consumption of food from plants containing viral coat proteins which indicates that adverse effects due to aggregate exposure through the dietary, non-food oral, dermal and inhalation routes occur. Therefore, EPA concludes that there is reasonable certainty that no harm will result to the U.S. population from aggregate exposure to residues of viral coat proteins produced in plants as part of a plant-pesticide including all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because, as discussed above, no toxicity to mammals has been observed for coat protein of Cucumber Mosaic Virus and the genetic material necessary for its production. Thus, a tolerance for this Coat Protein of Cucumber Mosaic Virus and the Genetic Material necessary for its production is not necessary to protect the public health. Therefore, 40 CFR part 180 is amended as set forth below.

## VIII. Objections and Hearing Requests

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

Any person may, by October 21, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the hearing clerk, at the address given under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the hearing clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

## IX. Public Docket

A record has been established for this rulemaking under docket control number [OPP–300539]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division(7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing request, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the Virginia address in Addresses at the beginning of this document.

## X. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. 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). 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 and prior consultation as specified by Executive Order 12875, entitiled 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 additions, since tolerance exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption 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. Nevertheless, the Agency 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. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

## XI. 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 the 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: August 14, 1997.

**Stephen L. Johnson,**

*Acting Director, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

## PART 180—[AMENDED]

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

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

2. Section 180.1186 is added to subpart D to read as follows:

**§ 180.1186 Coat protein of cucumber mosaic virus and the genetic material necessary for its production; exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of the biological plant pesticide Coat Protein of Cucumber Mosaic Virus and the genetic material necessary for its production in or on all food commodities.

[FR Doc. 97–22393 Filed 8-21-97; 8:45 am]

BILLING CODE 6560–50–F

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–300537; FRL–5739–3]**

**RIN 2070–AB78**

## Coat Proteins of Watermelon Mosaic Virus-2 and Zucchini Yellow Mosaic Virus and the Genetic Material Necessary for its Production; Exemption from the Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final Rule.

**SUMMARY:** This rule establishes an exemption from the requirement of a tolerance for residues of the biological pesticide coat proteins of watermelon Mosaic Virus-2 and Zucchini Yellow Mosaic Virus and the genetic material necessary for its production in or on all raw agricultural commodities. Cornell University submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act as amended by the Food Quality Protection Act of 1996 requesting the tolerance exemption. This regulation eliminates the need to establish a maximum permissible level for residues of Coat Proteins of Watermelon Mosaic Virus-2 and Zucchini Yellow Mosaic Virus and the genetic material necessary for its production.

**DATES:** This regulation is effective August 22, 1997. Objections and requests for hearings must be received by EPA on or before October 21, 1997.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number [OPP–300537], 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–300537], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300537]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

**FOR FURTHER INFORMATION CONTACT:** By mail: Linda Hollis, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7501W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: Rm. 5th fl., CS#1 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8733, hollis.linda@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of June 25, 1997 (62 FR 34271–34276)(FRL–5723–2) EPA issued a notice pursuant to section 408(d), of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), announcing the filing of a pesticide tolerance petition by Seminis Vegetable Seed, Inc., Woodland, CA. The notice contained a summary of the petition prepared by the petitioner and this summary contained conclusions and arguments to support its conclusion that the petition complied with the Food Quality Protection Act (FQPA) of 1996. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the biological pest control agent Coat Proteins of Watermelon Mosaic Virus-2 and Zucchini Yellow Mosaic Virus and the genetic material necessary for its production in or on all raw agricultural commodities.

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

The data submitted in the petition and other material have been evaluated. The toxicology data requirements in support of this exemption from the requirement of a tolerance were satisfied via data waivers from the open scientific literature.

### I. Risk Assessment and Statutory Findings

New section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for 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(c)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(c)(2)(B) 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...'' EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues.

First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide us in residential settings.

## II. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Additionally, 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.'' All available information indicates that viral coat proteins in food have no human toxicity and EPA is not aware of any other substances within or outside of the food supply that might have a common mechanism of human toxicity with residues of viral coat proteins produced in plants as part of a plant-pesticide.

Data waivers were requested for acute toxicity, genotoxicity, reproductive and developmental toxicity, subchronic toxicity and chronic toxicity data. The data waivers were accepted based on the long history of mammalian consumption of the entire plant virus particle in foods, without causing any deleterious human health effects [See OPP–300367A; FRL–5716–6]. Virus-infected plants currently are and have always been a part of both the human and domestic animal food supply and there have been no findings which indicate that plant viruses are toxic to humans and other vertebrates. Further, plant viruses are unable to replicate in mammals or other vertebrates, thereby eliminating the possibility of human infection. More importantly, however, this tolerance exemption will apply to that portion of the viral genome coding for the whole coat protein and any subcomponent of the coat protein expressed in the plant. This component alone is incapable of forming infectious particles.

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

## III. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from groundwater or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

1. *Dietary exposure*— a. *Food*. The use of viral coat protein mediated resistance will not result in any new dietary exposure to plant viruses. Entire infectious particles of watermelon Mosaic Virus-2 and Zucchini Yellow Mosaic Virus, including the coat protein component, are found in the fruit, leaves and stems of most plants. Viruses are ubiquitous in the agricutural environment at levels higher than will be present in transgenic plants. Virus infected food plants have historically been a part of the human and domestic animal food supply with no observed adverse effects to human health and infants and children upon consumption. Therefore, the lack of toxicity associated with plant viruses and the history of contamination of the food supply by virus coat proteins provides a scientific rationale for exempting from the requirement of a tolerance transgenic plants expressing virus coat proteins and leads the Agency to conclude that the use of Coat Proteins of Watermelon Mosiac Virus-2 and Zucchini Yellow Mosaic Virus and the genetic material necessary for its production will not pose a dietary risk of concern under normal conditions. Moreover, there is no evidence which indicates that adverse effects due to aggregate exposure of viral coat proteins (with substances outside the food supply) through dietary, non-food oral, dermal and inhalation occurs. This conclusion is suppported by the EPA's Scientific Advisory Panel's discussion regarding the Agency's Regulatory approach for plant pesticides which concluded:

i. The levels of virus in the agricultural environment are much higher than those levels present in transgenic plants.

ii. The existing contamination of the current food supply provides a scientific rationale for exempting from the requirement of a tolerance transgenic plants which express viral coat proteins.

b. *Drinking water exposure.* Potential non-occupational exposures in drinking water is negligible. Viral coat proteins produced in plants as part of a plant-pesticide are an integral part of the living tissue of the plant. As such, these components are subject to degradation and decay, a process which occurs fairly rapidly. Viral coat proteins produced in plants as part of a plant-pesticide do not persist in the environment or bioaccumulate. The rapid turnover of these substances in the environment limits their ability to present anything other than a very negligible exposure in drinking water drawn from either surface or groundwater sources.

2. *Other non-occupational exposure.* Other non-occupational exposure of engineered coat proteins via residential and indoor uses, e.g., uses around homes, parks, recreation areas, athletic fields and golf courses, will be minimal to non-existent as the coat protein is expressed only within the plant tissues.

a. *Dermal exposure.* Due to the nature of viral coat proteins produced in plants as part of a plant-pesticide, exposure through any route (i.e., dermal, respiratory) other than dietary is unlikely to occur. Physical contact with the plant or raw agricultural food from the plant may present some limited opportunity for dermal exposure. However, on a per person basis, the potential amounts involved in this exposure is negligible in comparison to exposure through the dietary route. Additionally, viral coat proteins produced in plants as part of a plant-pesticide are unlikely to cross the barrier provided by the skin.

b. *Inhalation exposure*. The occurrence of respiratory exposure of viral coat proteins produced in plants as part of a plant-pesticide is negligible in comparison to potential exposure through the dietary route. In some cases, viral coat proteins may be present in pollen, thus affording exposure to those individuals in areas exposed to wind-blown pollen. However, it is unlikely

that exposure to the pollen is equivalent to exposure to viral coat proteins produced in plants as part of a plant-pesticide. Viral coat proteins, when present in pollen, will likely be integrated into the tissue of pollen grain and are unlikely to cross the barrier provided by the mucous membrane of the respiratory tract and thus are not additive to dietary exposure. Moreover, exposure through inhalation via wind-blown pollen occurs to the whole virus particle and there is no evidence which suggests that exposure to whole plant viruses by wind-blown pollen results in any adverse effects. Therefore, it is unlikely that exposure to pollen that may contain viral coat proteins produced in plants as part of a plant-pesticide would result in adverse effects.

## IV. Safety Factors

Rather than relying on available animal experimentation data to support a tolerance exemption for viral coat proteins, EPA relied on the long history of safe human consumption of food containing plant viruses as the appropriate information base for this tolerance exemption. Because the EPA did not rely on animal data, determination of appropriate safety factors to be used in a human risk assessment was not considered.

## V. Infants and Children

Consistent with section 408(b)(2)(C) of the FFDCA, EPA has assessed the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. Based on all available information, the Agency concludes that viral coat proteins produced in plants as part of a plant-pesticide are ubiquitous in foods, including those foods consumed by infants and children. Moreover, there is no reason to believe that plant viral coat proteins are likely to occur in different amounts in foods, consumed by children and infants. Children are exposed as part of a normal diet to viral coat proteins and there is no evidence which indicates that viral coat proteins would have a diferent effect on children that on adults. Further, there is no evidence which suggests that such exposure to either adults or infants and children leads to any harm.

## VI. Other Considerations

1. *Endocrine disrupters.* The Agency has no informtion to suggest that Coat Proteins of Watermelon Mosaic Virus-2 and Zucchini Yellow Mosaic Virus and the genetic material necessary for its production will have an effect on the immune and endocrine systems. The Agency is not requiring information on the endocrine effects of this biological pesticide at this time; Congress has allowed 3 years after August 3, 1996, for the Agency to implement a screening program with respect to endocrine effects.

2. *Analytical method.* The Agency proposes to establish an exemption from the requirement of a tolerance without any numerical limitation; therefore, the agency has concluded that an analytical method is not required for enforcement purposes for Coat Proteins of Watermelon Mosaic Virus-2 and Zucchini Yellow Mosaic Virus and the genetic material necessary for its production.

## VII. Determination of Safety for U.S. Population, Infants and Children

For the U.S. population, including infants and children, Coat Proteins of Watermelon Mosaic Virus-2 and Zucchini Yellow Mosaic Virus and the genetic material necessary for its production has no known adverse effects. Extensive use and experience show the safety of foods containing viral coat proteins. There has been no evidence in the many years of human experience with the growing and consumption of food from plants containing viral coat proteins which indicates that adverse effects due to aggregate exposure through the dietary, non-food oral, dermal and inhalation routes occur. Therefore, EPA concludes that there is reasonable certainty that no harm will result to the U.S. population from aggregate exposure to residues of viral coat proteins produced in plants as part of a plant-pesticide including all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because, as discussed above, no toxicity to mammals has been observed for coat proteins of Watermelon Mosaic Virus-2 and Zucchini Yellow Mosaic Virus and the genetic material necessary for its production. Thus, a tolerance for this Coat Protein of Papaya Ringspot Virus and the Genetic Material necessary for its production is not necessary to protect the public health. Therefore, 40 CFR part 180 is amended as set forth below.

## VIII. Objections and Hearing Requests

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

Any person may, by October 21, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the hearing clerk, at the address given under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the hearing clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

## IX. Public Docket

A record has been established for this rulemaking under docket control number [OPP–300537]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public 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 22202.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing request, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the Virginia address in Addresses at the beginning of this document.

## X. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. 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). 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 and prior consultation as specified by Executive Order 12875, entitiled 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 additions, since tolerance exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption 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. Nevertheless, the Agency 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. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

## XI. 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 the 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 Parts 180 and 186

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

Dated: August 14, 1997.

**Stephen L. Johnson,**

*Acting Director, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

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

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

2. Section 180.1184 is added to subpart D to read as follows:

### § 180.1184 Coat Protein of Watermelon Mosaic Virus-2 and Zucchini Yellow Mosaic Virus and the genetic material necessary for its production; exemption from the requirement of a tolerance.

An exemption fron the requirement of a tolerance is established for residues of the biological plant pesticide Coat Protein of Watermelon Mosaic Virus-2 and Zucchini Yellow Mosaic Virus and the genetic material necessary for its production in or on all food commodities.

[FR Doc. 97–22394 Filed 8-21-97; 8:45 am]

BILLING CODE 6560-50-P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 180 and 186

**[OPP–300541; FRL–5739–7]**

**RIN 2070–AB78**

## Thiodicarb; Pesticide Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for combined residues of thiodicarb and its metabolite methomyl in or on broccoli, cabbage, cauliflower, and leafy vegetables (except *Brassica* vegetables). The petitioner, Rhone-Poulenc Ag Company, requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170).

**DATES:** This regulation is effective August 22, 1997. Objections and requests for hearings must be received by EPA on or before October 22, 1997.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number, [OPP–300541], 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–300541], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. If you wish to submit 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–300541]. 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: Thomas C. Harris, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5404, e-mail: harris.thomas@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of March 5, 1997 (62 FR 10050)(FRL–5586–1) EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP) for tolerance by Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.407 be amended by establishing a tolerance for combined residues of the insecticide thiodicarb (CAS number 59669-26-0, EPA chemical number 114501) and its metabolite methomyl (CAS number 16752-77-5, EPA chemical number 090301), in or on broccoli at 7 parts per million (ppm), cabbage at 7 ppm, cauliflower at 7 ppm , and leafy vegetables (except Brassica vegetables) at 35 ppm.

## I. Risk Assessment and Statutory Findings

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. . . .''

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. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

### *A. Toxicity*

1. *Threshold and non-threshold effect*. For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

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

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, the appropriate risk assessment (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.

2. *Differences in toxic effect due to exposure duration*. The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute'', ''short-term'', ''intermediate term'', and ''chronic'' risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. Since enaction of FQPA, this assessment has been expanded. The assessment will only be performed when there are primary dermal and inhalation exposures that result from residential exposures lasting from 1-7 days. However, the analysis will now address both dietary and non-dietary

sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In a short term assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

*B. Aggregate Exposure*

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. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. 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 for thiodicarb used in this tolerance assessment are derived from federal and private market survey data. EPA considers these data reliable. A range of estimates are supplied by this data and the upper end of this range is used for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations, including several regional groups, to pesticide residues. Review of this regional data allows EPA to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. To provide for the periodic evaluation of these estimates of percent crop treated, EPA will issue a data call-in under section 408(f) to all thiodicarb registrants for data on percent crop treated. That data call-in will require such data to be submitted every 5 years as long as the tolerances remain in force. For this pesticide, the most highly exposed population subgroup (non-nursing infants <1 year old) for the methomyl aggregate chronic assessment was not regionally based.

Section 408(b)(2)(E) of the FFDCA allows the Agency to rely on anticipated or actual residue levels in establishing a tolerance, provided that the Agency requires that data be provided 5 years after the establishment of the tolerance, and thereafter as the Agency deems appropriate, demonstrating that the residue levels are not above the levels relied upon. In establishing these tolerances for thiodicarb, the Agency relied upon Monte Carlo simulations which relied upon anticipated or actual residue levels. In addition, one of the chronic assessments performed by Novigen also utilized anticipated or actual residue levels. Accordingly, the Agency will require the submission of data pursuant to section 408(f)(1) of the FFDCA so that the Agency can determine 5 years from the date these tolerances are established whether thiodicarb residues on food are below the levels relied upon in establishing these tolerances.

## II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of thiodicarb and its metabolite methomyl and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for combined residues of thiodicarb and its metabolite methomyl on broccoli at 7 ppm, cabbage at 7 ppm, cauliflower at 7 ppm, and leafy vegetables (except Brassica vegetables) at 35 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

Chemically, each thiodicarb molecule is made up of two methomyl molecules joined by a sulfur atom. Plant metabolism studies show that thiodicarb is metabolized to methomyl, methomyl oxime, acetonitrile, and carbon dioxide. A ruminant animal metabolism study shows that thiodicarb is metabolized in steps to methomyl, methomyl oxime, acetonitrile, acetamide, acetic acid, and carbon dioxide. The breakdown to methomyl occurs more rapidly in plants and the environment than in animals. EPA has determined that residues of acetamide, acetonitrile, methomyl oxime, acetic acid, and carbon dioxide resulting from the application of thiodicarb or methomyl are not residues of concern in animals and will not be regulated. The only residues of concern in plants and animals are thiodicarb and its primary metabolite methomyl. However, methomyl residues may result from the application of either thiodicarb or methomyl products. The following discussion addresses:

1. The toxicological properties of thiodicarb.

2. The toxicological properties of methomyl.

3. A food exposure and risk analysis for thiodicarb.

4. A drinking water exposure and risk analysis for methomyl (resulting from use of either thiodicarb or methomyl).

5. An aggregate (i.e. food + drinking water) exposure and risk analysis for methomyl (resulting from use of either thiodicarb or methomyl).

There are no registered non-dietary (residential or non-occupational) uses of thiodicarb. Therefore, there is no non-dietary exposure or risk associated with thiodicarb.

*A. Toxicological Profile*

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

1. *Toxicological profile of technical thiodicarb*— i. *Acute toxicity*. In several acute oral toxicity studies with rats, the $LD_{50}$ ranged from 46.5 mg/kg for males and 39.1 mg/kg for females, which is Toxicity Category I, to 398 mg/kg for males and 248 mg/kg for females, which is Toxicity Category II (MRID 00025791, 00115604, 00115607). In a mouse study, the $LD_{50}$ was 73 mg/kg in males and 79 mg/kg in females (MRID 43784501).

The $LD_{50}$ in an acute dermal toxicity study with rabbits was found to be greater than 2,000 mg/kg. This is Toxicity Category III (MRID 44025501).

In an acute inhalation toxicity study with rats, the $LC_{50}$ for males was 0.126 mg/L, for females 0.115 mg/L, and greater than 0.32 mg/L for dust. These results are all considered to be in Toxicity Category II (MRIDs 00041432 and 00045467.

Thiodicarb is a Toxicity Category III primary eye irritant in rabbits. Instillation resulted in slight irritation (MRID 44025502).

Thiodicarb is a Toxicity Category IV primary dermal irritant in rabbits (MRID 44025503) and thiodicarb induced a weak dermal sensitization reaction in guinea pigs (MRIDs 41891004 and 43373201).

An acute delayed neurotoxicity study with thiodicarb in atropine-pretreated hens, using a dose level of 660 mg/kg ($LD_{50}$) was negative (MRIDs 00044961 and 00053253). No data are available on the acute and subchronic neurotoxicity of thiodicarb.

ii. *Subchronic toxicity*. In a subchronic toxicity study, Fisher 344 (COBS CD F/Crl BR) rats, 10/sex/group, were administered thiodicarb (97% a.i.) via the diet at dose levels of 1, 3, 10, and 30 mg/kg/day for 13 weeks. The NOEL was 3 mg/kg/day, and the Lowest Observed Effect Level (LOEL) was 10 mg/kg/day, based on decreased body-weight gain, decreased red blood cell (RBC) cholinesterase activity, and decreased hemoglobin (MRID 00044965).

In a subchronic feeding study in Beagle dogs, thiodicarb was administered via the diet at dose levels of 0, 15, 45, and 90 mg/kg/day for 13 weeks. The high dose was lowered to 76 mg/kg/day in females after day 36 due to the deaths of 2 high-dose females. The NOEL was 15 mg/kg/day, and the LOEL was 45 mg/kg/day, based on decreased RBC parameters (RBCs, hematocrit and hemoglobin) in both sexes (MRID 00044966).

In another subchronic toxicity study in dogs, thiodicarb was administered via the diet at dose levels of 0, 5, 15, and 45 mg/kg/day for 6 months. The NOEL was 15 mg/kg/day, and the LOEL was 45 mg/kg/day, based on liver effects of increased SGPT and increased liver weight (MRID 00079474).

In a 21-day dermal toxicity study, New Zealand White rabbits were administered thiodicarb via the skin at dose levels of 1,000, 2,000, and 4,000 mg/kg/day for 6 hours a day, 5 days a week for 3 weeks. The NOEL was 1,000 mg/kg/day, and the LOEL was 2,000 mg/kg/day, based on macrocytic anemia, erythema, and edema (MRIDs 00043737 and 00044967).

In a 16-day dermal toxicity study, New Zealand white rabbits were administered thiodicarb via the skin at dose levels of 1,000 and 4,000 mg/kg for 6 hours a day, 5 days a week for 3 consecutive weeks. The NOEL was 1,000 mg/kg/day, and the LOEL was 4,000 mg/kg/day, based on decreased erythrocytes, decreased hemoglobin, and decreased body weight (MRID 00043738).

In a 9-day dust inhalation study, Sprague-Dawley rats were administered thiodicarb particulates via the inhalation route at dose levels of 0, 4.8, 17.7, and 59.5 mg/m$^3$ for males, and 0, 4.8, 19.6, and 54.0 mg/m$^3$ for females (mean measured atmospheric concentrations) for 6 hours a day for 9 days. The NOEL was not determined. At 4.8 mg/m$^3$, two clinical signs typically associated with cholinesterase effects (pinpoint pupils and tremors) were observed in both sexes. There were no significant body-weight effects at this dose level in either sex, and no statistically significant effects were observed in any cholinesterase measurement (plasma, RBC, and brain) at 4.8 or 17.7/19.6 mg/m$^3$ in either sex (MRIDs 00045467 and 00053252).

In a 4-week feeding study, CD-1 mice of both sexes were administered thiodicarb via the diet at dose levels of; males 0, 6.2, 346, 734, and 1538 mg/kg/day, females 0, 8.3, 491, 954, and 2030 mg/kg/day for 4 weeks. The NOEL was 6.2 and 8.3 mg/kg/day for males and females respectively. The LOEL was 346 and 491 mg/kg/day for males and females respectively. These results are based on increased liver weight in females and increased spleen weight in both sexes (MRID 43611701).

In a subchronic feeding study, male and female Fischer 344 rats were administered thiodicarb via the diet at dose levels of 0, 1, 3, 10, and 30 mg/kg/day for 28 days. The NOEL for effects on cholinesterase activity was 10 mg/kg/day, and the LOEL was 30 mg/kg/day, based on decreased plasma and RBC cholinesterase activity (MRID 00098292).

iii. *Chronic toxicity and carcinogenicity*. Beagle dogs were administered technical thiodicarb via the diet at dose levels of 0, 164 (male 4.4/female 4.5 mg/kg/day), 487 (male 12.8/female 13.8 mg/kg/day), and 1506 (male 38.3/female 39.5 mg/kg/day) ppm for one year. The NOEL is male 4.4/female 4.5 mg/kg/day, and the LOEL is male 12.8/female 13.8 mg/kg/day, based on cholinesterase inhibition. The systemic NOEL is male 12.8/female 13.8 mg/kg/day and the systemic LOEL is male 38.3/female 39.5 mg/kg/day, based on reduced hematology parameters including erythrocytes, hemoglobin, and hematocrit (MRID 00159813).

In a chronic toxicity/carcinogenicity study, Sprague-Dawley rats of both sexes were administered thiodicarb via the diet at dose levels of 0 ppm, 60 ppm (male 3.3/female 4.5 mg/kg/day), 200 ppm (male 12/female 15 mg/kg), and 900 ppm (male 60/female 80 mg/kg) for 104 weeks. The systemic NOEL was 60 ppm (male 3.3/female 4.5 mg/kg/day) and the LOEL was 200 ppm (male 12/female 15 mg/kg/day), based on the increased incidence of extramedullary hemopoiesis in males and decreased RBC cholinesterase in females. There were no compound-related tumors observed in the females. The high-dose males displayed an increased incidence of interstitial cell tumors in the testes compared to the concurrent control males, and the incidence was greater than the historical control also (MRIDs 43308201, 43405001, 43596401).

In a carcinogenicity study, Charles River CD-1 mice of both sexes were administered thiodicarb via the diet at dose levels of 0, 5, 70, and 1,000 mg/kg/day for 97 weeks. The NOEL was 70 mg/

kg/day, and the LOEL was 1,000 mg/kg/day, based on increased mortality in females, decreased body-weight gain in males, decreased hemoglobin, hematocrit, and erythrocytes, increased alanine aminotransferase and total bilirubin, increased liver and spleen weights, and increased incidences of kidney, liver, and spleen lesions. In this study, the administration of thiodicarb in the diet to CD-1 mice resulted in increased incidences of hepatocellular tumors in both sexes. In both male and female mice, there were statistically significant increases in hepatocellular adenomas, carcinomas and combined adenomas/carcinomas at the highest dose (1,000 mg/kg/day); there were also statistically significant positive dose-related trends for adenomas and carcinomas, alone and combined. The incidence of adenomas and carcinomas at the highest dose exceeded that of historical controls in both sexes; in addition, in male mice, the incidence of adenomas at the mid-dose (70 mg/kg/day) exceeded that of historical controls (MRIDs 43000501 and 43619301).

In another carcinogenicity study, Charles River CH:COBS CD-L (ICR)BR mice of both sexes were administered thiodicarb via the diet at dose levels of 1, 3, and 10 mg/kg/day for 104 weeks. The NOEL was 3 mg/kg/day, and the LOEL was 10 mg/kg/day, based on mortality to thiodicarb in females (MRID 00041407).

Thiodicarb is classified as a B2 - probable human carcinogen by the Cancer Peer Review Committee (CPRC). The B2 classification was based on statistically significant increases in hepatocellular adenomas, carcinomas, and combined adenoma/carcinoma in both sexes of the CD-1 mouse and statistically significant increases in testicular interstitial cell tumors in male Sprague-Dawley rats.

iv. *Developmental toxicity*. In a rat developmental toxicity study, pregnant Charles River CD COBS rats were administered thiodicarb via gavage on gestation days 6-19 at dose levels of 0 (vehicle 0.5% methocel), 10, 20, and 30 mg thiodicarb/kg body weight/day. In another rat developmental toxicity study, pregnant Fisher 344 rats were dosed via the diet on (a) gestation days 6 to 15 or (b) gestation days 0-20 at dose levels of 0.5, 1.0, 3.0, and 100 mg thiodicarb (>99%)/kg body weight/day. When these two studies are considered together, the maternal toxicity NOEL is 10 mg/kg/day, and the maternal toxicity LOEL is 20 mg/kg/day, based on clinical signs (tremors, inactivity). The developmental toxicity NOEL is 3 mg/kg/day, and the LOEL is 10 mg/kg/day, based on decreased fetal body weights and increased incidence of litters and fetuses with developmental variations which included unossification of sternebrae #5 and/or #6 and other sternebrae (MRIDs 00043739, 00043740, 00043741, 00053254, 00053255, 00053256).

In a developmental toxicity study, artificially-inseminated New Zealand white rabbits were administered thiodicarb via gavage on gestation days 6 through 19 at dose levels of 0 (vehicle, 0.5% aqueous methylcellulose), 5, 20, and 40 mg/kg/day. The maternal toxicity NOEL was 20 mg/kg/day, and the maternal toxicity LOEL was 40 mg/kg/day, based on reduced body-weight gain and food consumption. The developmental toxicity NOEL was 40 mg/kg/day, the highest dose tested (MRIDs 00159814, 40280001).

In a developmental toxicity study, Charles River CD-1 mice were administered thiodicarb on gestation days 6 through 16 via gavage at dose levels of 0 (vehicle 0.5% methocel), 50, 100, and 200 mg Thiodicarb/kg body weight/day. The maternal toxicity NOEL was 100 mg/kg/day, and the maternal toxicity LOEL was 200 mg/kg/day, based on increased mortality. The developmental toxicity NOEL was 200 mg/kg/day, the highest dose tested (MRIDs 00043742, 00043743, 00053257, 00053258).

v. *Reproductive toxicity*. In a two-generation reproduction study, Crl:CD BR/VAF/Plus rats were fed doses of 0, 5, 15, and 45 mg/kg/day of thiodicarb. The reproductive/developmental toxicity NOEL is 5 mg/kg/day, and the reproductive/developmental toxicity LOEL is 15 mg/kg/day, based on decreased fetal body weight and viability. The systemic NOEL is 5 mg/kg/day and the systemic LOEL is 15 mg/kg/day, based on decreased body weight/gain and food consumption in both sexes (MRIDs 42381301, 42381302, 42735101).

vi. *Mutagenicity*. Thiodicarb did not induce a mutagenic response in the Ames assay, with or without metabolic activation (MRIDs 00044872, 00135792). Thiodicarb induced dose-related increased mutant frequencies in mouse lymphoma TK +/− cells, with and without metabolic activation and is considered to have an equivocal weak effect in the mouse lymphoma forward mutation assay (MRID 00151574). Thiodicarb, with or without metabolic activation, did not cause a clastogenic response in the chromosomes of Chinese hamster ovary cells (MRID 00151572). Thiodicarb is considered inactive in the primary rat hepatocyte unscheduled DNA synthesis assay (MRID 00151573).

2. *Toxicological profile of technical methomyl*— i. *Acute toxicity*. The acute oral $LD_{50}$ values for methomyl with rats were 34 and 30 mg/kg in males and females, respectively (Toxicity Category I). Clinical signs observed in all treatment groups of both sexes included tremors, low posture and salivation (MRID 42140101).

The dermal $LD_{50}$ value for methomyl in rabbits was greater than 2000 mg/kg (Toxicity Category III) for both sexes (MRID 42074602).

The acute inhalation $LC_{50}$ for methomyl was 0.258 mg/L in rats for both sexes (Toxicity Category II), based on a four-hour exposure (nose only) to technical grade methomyl aerosol (MRID 42140102).

Methomyl is highly toxic via ocular exposure. In a primary eye irritation study, a female rabbit treated with 15 mg of technical methomyl (92.4%) died 20 minutes after the treatment with typical cholinergic symptoms indicative of neurotoxicity. Animals treated with 10 mg of methomyl exhibited similar clinical signs of neurotoxicity but survived. At this dose, corneal opacity and iritis were observed at 1 hour after the treatment and completely reversed by 7 days (MRID 41964001).

Another primary eye irritation study in rabbits using 30.5% methomyl formulation showed corneal opacity and conjunctivitis from 7 to 14 days in washed and unwashed eyes, respectively. Primary eye irritation for methomyl was considered to be in the Toxicity Category I (MRID 00053407).

A primary dermal irritation study with technical methomyl in rabbits showed no erythema or edema placing methomyl in Toxicity Category IV (MRID 42074603).

A dermal sensitization study in guinea pigs using technical methomyl showed that the compound is not a skin sensitizer (MRID 42074605).

ii. *Subchronic toxicity*. In a 90-day feeding study in rats, Charles River CD rats (10/sex/group) were fed methomyl at dietary levels of 0, 10, 50 and 250 ppm (equivalent to 0, 0.5, 2.5 and 12.5 mg/kg/day, respectively, based on the standard conversion ratio) for 13 weeks. An additional group received 125 ppm (6.25 mg/kg/day) of the test material for 6 weeks and 500 ppm (25 mg/kg/day) for the remaining 7 weeks. Treatment did not cause increased mortalities. No inhibition of cholinesterase activity was observed in any treated group. The NOEL is 125 ppm (6.25 mg/kg/day) and the LOEL is 250 ppm (12.5 mg/kg/day) based on inhibited body weight gain in both sexes and erythroid hyperplasia in the bone marrow of males (MRID 00007190).

In a 21-day dermal toxicity study, New Zealand White rabbits were dermally exposed to methomyl (98.35%, a.i.) for 21 days at dose levels of 0, 5, 50 or 500 mg/kg/day. Clinical signs included hyperactivity (increased reaction to stimuli-noise) at the high-dose (both sexes). At Day 21, mid- and high-dose males and high-dose females displayed significantly lower plasma cholinesterase (ChE) activity. Mean RBC ChE activity was also decreased, but only slightly, at the high-dose (both sexes). Brain ChE activity was significantly decreased at the high-dose (both sexes). At the mid-dose, although not statistically significant, inhibition of brain ChE activity was indicated (3/5 males and 4/5 females exhibited brain ChE inhibition when compared with controls). The NOEL for systemic toxicity is 5 mg/kg/day and the LOEL is 50 mg/kg/day based on brain and plasma ChE inhibitions. No dermal irritation was observed (MRID 41251501).

iii. *Chronic toxicity and carcinogenicity*. Sufficient data are available to assess the chronic toxicity and carcinogenic potential of methomyl. Methomyl has been classified as a ''Group E'', i.e. the chemical is not likely to be carcinogenic to humans via relevant routes of exposure (HED/RfD/Peer Review Report, October 25, 1996).

*Combined chronic toxicity and carcinogenicity study in rats*. Charles River CD rats (80/sex/group) were fed diets containing methomyl (99+%) for 2 years at dose levels of 0, 50, 100 and 400 ppm (0, 2.5, 5.0 and 20.0 mg/kg/day, respectively, based on the standard conversion ratio). No significant toxicity was observed. The NOEL is 100 ppm (5 mg/kg/day) and the LOEL is 400 ppm (20 mg/kg/day) based on depressed body weight gain. Methomyl was not considered carcinogenic because there was no evidence that the test material increased the incidence of any neoplastic lesion. Although the HED/RfD Review Committee accepted the study, the Committee determined that the animals could have tolerated higher doses than the highest dose level used (MRID 00078361).

*Chronic toxicity study in dogs (2-year)*. Beagle dogs (4/sex/group) were fed diets containing methomyl (90%) at dose levels of 0, 50, 100, 400 and 1,000 ppm (0, 1.25, 2.5, 10, and 25 mg/kg/day, respectively, based on the standard conversion ratio) for 24 months. Two males at the 1,000 ppm group exhibited tremors, salivation, incoordination, and circling movements during the 13th week of the study. One female in the 1,000 ppm group died in the 9th week of the study. A replaced dog exhibited repeated convulsive seizures after 17 days of dosing and died on day 18. There were no significant differences among treatment and the control groups for RBC and plasma ChE activities which were measured at week 9 and week 13 (high dose only) of the study. The NOEL is 100 ppm (2.5 mg/kg/day) and the LOEL is 400 ppm (10.0 mg/kg/day) based on histopathological effects in kidneys manifested as swollen/irregular epithelial cells of the proximal convoluted tubules as well as an increase in the amount of pigment in the cytoplasm of these cells (MRID 00007091).

*Carcinogenicity study in mice*. CD-1 mice (80/sex/group) were fed diets containing methomyl (99+%) initially at levels of 0, 50, 100 and 800 ppm (0, 7.5, 15 and 120 mg/kg/day, respectively, based on the standard conversion ratio). Due to increased mortality, the high dose level was decreased to 400 ppm at week 28; further, the high and mid dose levels were reduced to 200 and 75 ppm, respectively, at week 39 for the same reason. These levels (50, 75 and 200 ppm) were maintained for the remainder of the 104 week treatment period. The highest dose level tested in this study was considered to be adequate for carcinogenicity testing based on increased mortality. The treatment did not alter the spontaneous tumor profile in this strain of mice under the test conditions (MRID 00078423).

*Other carcinogenic issues*. It should be noted that methomyl is a metabolite of and is structurally-related to thiodicarb, a pesticide that was classified as a B2 carcinogen. In addition, acetamide, a metabolite of methomyl, has been evaluated by the HED/CPRC and classified as a Group C carcinogen, possible human carcinogen. However, after a thorough investigation, the HED/RfD Review Committee concluded that the ingestion of anticipated levels of methomyl and acetamide in the diet should not represent a significant carcinogenic hazard to the consuming public based on the following:

1. The conversion rate of methomyl to acetamide is low, approximately 2-3 percent, therefore, residue levels of acetamide in edible meat should be low.

2. Carcinogenicity studies with methomyl in two rodent species indicated no increase in any type of tumor under the test conditions.

3. The product is comprised of 98.7 percent syn-isomer and 0.092 percent anti-isomer, syn-isomer must be converted to anti-isomer before acetamide is formed.

4. Acetamide induced liver tumors in rats only when administered at very high dosages, i.e. more than 1,000 mg/kg/day. (HED/RfD/Peer Review Report, October 25, 1996).

iv. *Developmental toxicity*. Methomyl (99 - 100%) was administered to 25 presumed pregnant Charles River-CD (ChR-CD) rats/group in the diet at concentrations of 0, 50, 100 and 400 ppm (0, 4.9, 9.4 and 33.9 mg/kg/day) on gestation days 6 through 16. The data did not reveal any apparent developmental toxicity. The NOEL for maternal toxicity is 100 ppm (9.4 mg/kg/day) and the LOEL is 400 ppm (33.9 mg/kg/day) based on decreased body weight gain and food consumption during gestation. The NOEL for developmental toxicity is 400 ppm (33.9 mg/kg/day) (MRID 00008621).

Methomyl (98.7%) was administered via stomach tube to 20 presumed pregnant New Zealand white (DLI:NZW) rabbits per group (19 in the high-dose group) at dosages of 0, 2, 6 and 16 mg/kg/day on gestation days 7 through 19. Clinical signs indicated neurotoxic effects in high-dose rabbits. There was no evidence of developmental toxicity in this study. The NOEL for developmental toxicity is 16 mg/kg/day. The NOEL for maternal toxicity is 6 mg/kg/day and the LOEL is 16 mg/kg/day based on mortalities and clinical signs (MRID 00131257).

v. *Reproductive toxicity*. Sprague-Dawley rats in the $F_0$ parental generation were fed methomyl at dose levels of 0, 75, 600 or 1,200 ppm (0, 3.75, 30, or 60 mg/kg/day, respectively, based on the standard conversion ratio). The $F_1$ offspring were treated at the same dosages. There was a dose-related increase in clinical signs involving the nervous system during the first few weeks of the study and the incidence of alopecia was increased in the 600 and 1,200 ppm group animals. The NOEL for systemic toxicity is 75 ppm (3.75 mg/kg/day) and the LOEL is 600 ppm (30 mg/kg/day) based on decreased body weight and food consumption and altered hematology parameters. The NOEL for reproductive toxicity is 75 ppm (3.75 mg/kg/day) and the LOEL is 600 ppm (30 mg/kg/day) based on decreases in both the mean number of live pups and mean body weights of offspring (MRID 43250701).

vi. *Mutagenicityy*. Sufficient data are available to satisfy data requirements for mutagenicity testing. Technical methomyl did not induce a genotoxic response in any of the tests listed below.

*Gene mutation*. In a Chinese hamster ovary (CHO) cells HGPRT forward gene mutation assay, methomyl was negative up to cytotoxic levels (≥40 mM = 6.5

mg/mL -S9; ≥150 μM = 0.24 mg/mL +S9) (MRID 00161887).

*Chromosomal aberration assay*. In a mouse micronucleus assay, methomyl was negative in ICR mice up to an overtly toxic dose (12 mg/kg) administered once by oral gavage. There was no evidence of a cytotoxic effect on the target tissue (MRID 44047703). An in vivo bone marrow cytogenetic assay indicated that the test was negative in Sprague Dawley rats up to an overtly toxic level (20 mg/kg) administered once by oral gavage. Target tissue cytotoxicity was not observed (MRID 00161888).

*Other genotoxic effects*. Methomyl was found to be inactive in a series of EPA-sponsored mutagenicity studies which included: *Salmonella typhimurium /Escherichia coli* reverse gene mutation assays, DNA damage studies in bacteria, yeast and human lung fibroblasts, and a Drosophila melanogaster sex-linked recessive lethal assay (MRID 00124901).

vii. *Neurotoxicity studies*. An acute delayed neurotoxicity study with methomyl in atropine-pretreated hens, using the $LD_{50}$ dose (28 mg/kg) as well as higher doses, was negative (MRID 00008827).

No data are available on the acute and subchronic neurotoxicity of methomyl in mammals. Since methomyl is a carbamate and neurotoxic signs have been observed in two species (dogs and rabbits) by two different exposure routes (oral and dermal, respectively), acute and subchronic neurotoxicity studies are needed for a thorough investigation of this parameter. A neurotoxicity screening battery (acute and subchronic) is required to support the re-registration of this chemical.

*B. Toxicological Endpoints*

1. *Acute toxicity*— i. *Thiodicarb*. For acute dietary exposure (1 day) the developmental NOEL of 3 mg/kg/day from a developmental toxicity study in the rat is the endpoint to be used for risk assessment for females 13+ years. This is based on skeletal variations and decreases in pup body weights at 10 mg/kg/day. For the overall U.S. population, and all other subgroups, the maternal NOEL of 10 mg/kg/day is the endpoint to be used for risk assessment. This is based on the clinical signs of tremors and inactivity at 20 mg/kg/day (LOEL).

For thiodicarb, EPA has decided that an MOE equal to or greater than 100 is considered to be protective. Although there is a data gap (acute neurotoxicity study), EPA has determined that this is simply a confirmatory study. Other than this study, the database is complete. While tremors and inactivity were observed in one developmental study, other instances of neurotoxic behavior have not been observed in the remaining studies.

ii. *Methomyl*. For acute dietary exposure (1 day) deaths in dams on days 1-3 after dosing at 16 mg/kg/day (LOEL) from a developmental toxicity study in rabbits (MRID# 00131257) was selected as the endpoint for risk assessment. The maternal NOEL of 6 mg/kg/day will be used for risk assessment.

For methomyl, EPA has decided that an MOE equal to or greater than 300 is considered protective. For calculating the MOE, an extra safety factor of 3 will be used in addition to the usual 100 due to the lack of acute and subchronic neurotoxicity studies (data gaps) as well as the severity of effects (death in 1-3 days) seen at the 16 mg/kg/day dose. Unlike thiodicarb, the two neurotoxicity studies on methomyl are critical data gaps based on the fact that neurotoxicity has been demonstrated in animals studies in two species (dog, rabbit) and by both the oral and dermal routes of exposure. Because of the effects observed, exposure to all population subgroups are of concern.

2. *Short - and intermediate - term toxicity*. While endpoints for short- and intermediate- term dermal and inhalation exposures have been identified they are not discussed here as they will not be used in this tolerance assessment. Short- and intermediate-term risk analysis is conducted when there may be primary dermal and inhalation exposure which could result, for example, from residential pesticide applications. Since there are no residential uses of thiodicarb EPA believes that there is no exposure and therefore no short - and intermediate - term risk (regardless of toxicity).

3. *Chronic toxicity*— i. *Thiodicarb*. EPA has established the RfD for thiodicarb at 0.03 milligrams/kilogram/day (mg/kg/day). This RfD is based on a chronic rat toxicity study with a NOEL of 3.3 mg/kg/day for males and 4.5 mg/kg/day for females. The LOEL was 12 mg/kg/day for males and 15 mg/kg/day for females, based on the increased incidence of extramedullary hemopoiesis in males and decreased RBC cholinesterase in females. (MRID 43308201). An uncertainty factor (UF) of 100 was applied to account for intraspecies variability and interspecies extrapolation.

ii. *Methomyl*. EPA has established the RfD for methomyl at 0.008 milligrams/kilogram/day (mg/kg/day). This RfD is based on a two-year feeding study in dogs (MRID# 00007091) with a NOEL of 2.5 mg/kg/day. The LOEL was 10 mg/kg/day based on histopathological effects in kidney. An uncertainty factor (UF) of 100 was applied to account for both inter-species extrapolation and intra-species variability. An extra safety factor of 3 was applied in addition to the 100 due to the lack of acute and subchronic neurotoxicity studies (data gaps).

4. *Carcinogenicity*— i. *Thiodicarb*. The Health Effects Division Carcinogenicity Peer Review Committee (CPRC) classified thiodicarb as Group B2 - probable human carcinogen (document dated June 10, 1996).

The B2 classification was based on statistically significant increases in hepatocellular adenomas, carcinomas, and combined adenoma/carcinoma in both sexes of the CD-1 mouse at 1,000 mg/kg/day and statistically significant increases in testicular interstitial cell tumors in male Sprague-Dawley rats at 60 mg/kg/day.

The CPRC recommended that a non-linear methodology (MOE) be applied for the estimation of human risk, with the point of departure set at the 5 mg/kg/day dose, the lowest dose tested in the mouse carcinogenicity study, based on the hepatocellular combined adenoma/carcinoma in male mice.

The CPRC felt it was inappropriate to apply a linear low-dose extrapolation to the animal data because the increased incidences of tumors were statistically significant only at the highest dose in both species; in the case of the mice, the highest tested dose (1,000 mg/kg/day) is the limit dose for a carcinogenicity study and it may have been excessive. In addition, there was no evidence of genotoxicity.

ii. *Methomyl*. The Health Effects Division Carcinogenicity Peer Review Committee classified methomyl as Group E - the chemical is not likely to be carcinogenic to humans via relevant routes of exposure (document dated October 25, 1996).

*C. Exposures and Risks*

1. *From food and feed uses*. Tolerances have been established (40 CFR 180.407) for the combined residues of thiodicarb and its metabolite methomyl, in or on a variety of raw agricultural commodities. Thiodicarb has tolerances on sweet corn (2.0 ppm), cottonseed (0.4 ppm), and soybeans (0.2 ppm). Methomyl has tolerances on numerous crops ranging from 0.1 to 10 ppm. There are no tolerances on meat, milk, poultry, or eggs. Risk assessments were conducted by EPA to assess dietary exposures and risks from thiodicarb as follows:

i. *Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological

study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure.

To estimate acute dietary exposure for thiodicarb, the registrant conducted Monte Carlo simulations for the overall U.S. population, women 13 years and older, children 1 to 6 years of age, and infants. These analyses included residues from field trial studies, consumption data from the 1989 through 1992 USDA Continuing Survey of Food Intake by Individuals (CSFII), and information on the percentages of the crop treated.

Food consumption data from the USDA's CSFII conducted from 1989 through 1992 were used to estimate dietary exposure. The USDA provided statistical weights that permitted the data from the various years of the survey to be combined.

For the acute analysis, field trial residues were used for all crops. In compliance with the EPA's guidance document, residue distributions from field studies conducted at maximum label conditions (e.g. maximum number of applications, maximum application rate, and minimum preharvest intervals) were used for foods considered to be single-serving commodities (e.g. cabbage, broccoli, lettuce); mean field trial residues were used for blended/processed commodities (e.g. cottonseed meal, soybean oil).

Processing factors were calculated for cottonseed meal, cottonseed oil, and soybean oil. These factors were used in conjunction with the mean field trial residues to estimate residue levels in the processed commodities.

Residue values were adjusted for the percent of the crop estimated to be treated with thiodicarb. These percentages were provided by the Agency's Biological and Economic Analysis Division (BEAD). The maximum percentage reported for a particular crop was used in the acute exposure analyses. Percent crop treated information was not provided for swiss chard, parsley, cress, and endive. The percent crop treated for spinach was assumed for these crops.

Acute exposure estimates to thiodicarb were compared against the developmental NOEL of 3 mg/kg/day from a rat developmental study in which decreased pup body weight was observed. Because of the effects observed, the population subgroup of concern is women of child-bearing age. For the overall U.S. population, children 1 to 6 years of age, and infants acute exposure estimates were compared against the maternal NOEL of 10 mg/kg/day from a rat developmental study based on clinical signs of tremors and inactivity.

The MOE is a measure of how close the high end exposure comes to the NOEL (the highest dose at which no effects were observed in the laboratory test), and is calculated as the ratio of the NOEL to the exposure (NOEL/exposure = MOE). Generally, acute dietary MOEs greater than 100 tend to cause no dietary concern to the Agency when results are compared to animal-derived data. The MOEs for acute dietary exposure were calculated using the estimates at the 99.9 percentile of exposure for groups of concern. The acute exposure MOEs for the application of thiodicarb are presented below in Table 1.

TABLE 1. ACUTE EXPOSURE MOEs FROM THE APPLICATION OF THIODICARB

| Group of Concern | Exposure | NOEL | MOE |
|---|---|---|---|
| U.S. Population. | 0.013792 | 10 mg/kg/day | 218 |
| Woman 13 years and older. | 0.013500 | 3 mg/kg/day | 222 |
| Children 1 to 6. | 0.022758 | 10 mg/kg/day | 439 |
| Infants ..... | 0.010575 | 10 mg/kg/day | 946 |

The results of the acute exposure analyses indicate that there are adequate MOEs (equal to or greater than 100) for the overall U.S. population, the population subgroup of concern, women of child bearing age, as well as for the, infants and children from the application of thiodicarb.

ii. *Chronic exposure and risk*. For thiodicarb, a Dietary Risk Evaluation System (DRES) chronic exposure analysis was performed using tolerance level residues and BEAD percent crop treated information to estimate the Anticipated Residue Contribution (ARC) for the general population and 22 subgroups.

Using existing thiodicarb tolerances result in a TMRC which represents 23%, 14%, and 36% of the RfD for the U.S. general population, infants, and children (1 to 6 years old). A total of 22% of the RfD is occupied by females (13+ years, nursing) which is the highest subgroup. If more refined estimates of dietary exposure were made (i.e., use of anticipated residues) lower chronic risks would be estimated.

Even including the pending tolerances and the higher tolerance for cottonseed, chronic dietary risk from food sources is not of concern.

For thiodicarb, the Cancer Peer Review Committee recommended that a non-linear methodology (MOE) be applied for the estimation of human cancer risk. The Cancer Peer Review Committee has determined that the NOEL of 5 mg/kg/day be used as the point of departure for estimating human risk. Cancer MOEs are estimated by dividing the NOEL of 5 mg/kg/day, by the chronic exposure. The assessment was conducted for the Total U.S. Population only.

Exposure = ARC = 0.007 mg/kg/day

MOE = NOEL ÷ Exposure = 5 mg/kg/day ÷ 0.007 mg/kg/day = 714

The MOE of 714 assumes all residues to be at tolerance level. Percent crop treated information was utilized.

2. *From drinking water*. Thiodicarb breaks down rapidly in the environment to methomyl. Methomyl, the major degradate of thiodicarb, is very mobile and persists in the field for a time sufficient (field dissipation half life = 18 days) to leach into groundwater. This tendency is enhanced when soils are permeable and the water table is high.

Since thiodicarb breaks down rapidly to methomyl, EPA has estimated the exposure and risk associated with the highest methomyl residues detected in ground water monitoring studies and with the PRZM/EXAMS model numbers for surface water.

The following assumptions have been made to estimate exposure; water consumption is defined as all water obtained from the household tap that is consumed either directly as a beverage or used to prepare foods and beverages. For the adult male exposure calculation, the average adult body weight is assumed to be 70 kg, and it is assumed that the average adult consumes 2 liters of water (l)/day. For children's exposure, the average body weight is assumed to be 10 kg and the average water consumption is assumed to be 1 liter per day.

The other assumption inherent in this calculation is that water from the same source containing the same contaminant level is consumed throughout a 70-year lifetime. The second of these assumptions is extremely conservative, since most members of the U.S. population move at some time during their lifetime and do not live in the same area or drink from the same water source for a 70-year lifetime.

Exposure is calculated using the following formula for adults(males):

Exposure = (chemical concentration in µg/L in ground and/or surface water) x ($10^{-3}$ mg/µg) ÷ (70 kg body weight) x (2L water consumed/day)

For children (1 to 6 years old), the exposure would be calculated using the following formula:

Exposure = (chemical concentration in µg/L in ground and/or surface water) x ($10^{-3}$ mg/µg) ÷ (10 kg body weight) x (1L water consumed/day)

i. *Acute exposure and risk*. Thiodicarb breaks down rapidly in the environment to methomyl and methomyl is the pesticide that was monitored in ground water and surface water studies. The methomyl acute dietary endpoint is used for the acute dietary risk from water and is based on the maternal toxicity NOEL of 6 mg/kg/ day from the rabbit developmental toxicity study. For calculating the MOE, an extra safety factor of 3 will be used in addition to the 100 (MOE = 300) due to the lack of acute and subchronic neurotoxicity studies as well as the severity of effects seen in the rabbit developmental toxicity study.

The EPA estimate for methomyl in ground water to be used in the acute exposure analyses is 20 ppb and is based on a small-scale prospective ground water study performed by DuPont. The EFED-supplied estimate for methomyl in surface water is 30 ppb which is based on a worst-case PRZM/ EXAMS run showing a concentration of 151 ppb in an agricultural farm pond and a DuPont ecological monitoring study showing a minimum 5-8 fold dilution factor. The use of the 5-fold dilution factor in estimating the concentration in surface water thus accounts for the high end of the possible range.

a. *Adult male acute exposure*.

Methomyl exposure (highest concentration detected in ground water) = (20 µg/L) x ($10^{-3}$ mg/µg) ÷ (70 kg body weight) x (2L day) = 5.7 x $10^{-4}$ mg/kg/ day.

Methomyl exposure (highest concentration modeled in surface water) = (30 µg/L) x ($10^{-3}$ mg/µg) ÷ (70 kg body weight) x (2L day) = 8.57 x $10^{-4}$ mg/kg/ day.

The highest exposure number will be used for acute water risk assessment for µg/L) x ($10^{-3}$ mg/µg) ÷ (70 kg body weight) x (2L day) = 8.57 x $10^{-4}$ mg/kg/ day.

b. *Children's (1 to 6 years old) acute exposure*.

Methomyl exposure (highest concentration detected in ground water) = (20 µg/L) x ($10^{-3}$ mg/µg) ÷ (10 kg body weight) x (1L day) = 2.0 x $10^{-3}$mg/kg/ day.

Methomyl exposure (highest concentration modeled in surface water) = (30 µg/L) x ($10^{-3}$ mg/µg) ÷ (10 kg body weight) x (1L day) = 3.0 x $10^{-3}$ mg/kg/ day.

The highest exposure number will be used for acute water risk assessment for µg/L) x ($10^{-3}$ mg/µg) ÷ (10 kg body weight) x (1L day) = 3.0 x $10^{-3}$ mg/kg/ day.

c. *Acute risk-water*.

NOEL//Exposure = MOE

Adult (male) MOE = 6 mg/kg/day ÷ acute water exposure (8.57 x $10^{-4}$mg/kg/ day) = 7,001

Children's MOE = 6 mg/kg/day ÷ acute water exposure(3 x $10^{-3}$ mg/kg/ day) =2,000

ii. *Chronic exposure and risk*. The chronic estimated environmental concentration for methomyl is 26 ppb for surface water and 2 ppb for ground water.

a. *Adult male chronic exposure*.

Methomyl exposure (average concentration detected in ground water) = (2 µg/L) x ($10^{-3}$ mg/µg) ÷ (70 kg body weight) x (2L day) = 5.7 x $10^{-5}$ mg/kg/ day.

Methomyl exposure (average concentration detected in surface water) = (26 µg/L) x ($10^{-3}$ mg/µg) ÷ (70 kg body weight) x (2L day) = 7.4 x $10^{-4}$ mg/kg/ day.

The highest exposure number will be used for chronic water risk assessment = 7.4 x $10^{-4}$.

b. *Children's(1 to 6 years old) chronic exposure*.

Methomyl exposure (average concentration detected in ground water) = (2 µg/L) x ($10^{-3}$ mg/µg) ÷ (10 kg body weight) x (1L day) = 2.0 x $10^{-4}$ mg/kg/ day.

Methomyl exposure (average concentration modeled in surface water) = (26 µg/L) x ($10^{-3}$ mg/µg) ÷ (10 kg body weight) x (1L day) = 2.6 x $10^{-3}$ mg/kg/ day.

The highest exposure number will be used for acute water risk assessment for children = 2.6 x $10^{-3}$.

c. *Chronic Risk- Water*. The chronic dietary endpoint, the RfD, is 0.008 mg/ kg/day for methomyl, and is used to calculate the chronic dietary risk. The RfD was established based on a 2-year dog feeding/carcinogenicity study with a NOEL of 2.5 mg/kg/day and an uncertainty factor of 100 to account for both inter-species extrapolation and intra-species variability. An additional uncertainty factor of 3 was applied to account for the lack of acute and subchronic neurotoxicity studies.

The chronic dietary risk from ground and surface water is expressed as a percentage of the RfD through the following formula:

chronic water exposure mg/kg/day ÷ RfD mg/kg/day x 100 = % RfD

%RfD Adult (male) = 7.4 x $10^{-4}$ ÷ 0.008 mg/kg/day x 100 =9%RfD

%RfD Children(1 to 6 years) = 2.6 x $10^{-3}$ ÷ 0.008 mg/kg/day x 100 =33%RfD

3. *From non-dietary exposure*. Thiodicarb is not currently registered for any residential uses. Since there are no residential uses of thiodicarb, EPA does not believe that there will be any risk associated with non-dietary exposure.

4. *Cumulative exposure to substances with common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

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

EPA does not have, at this time, available data to determine whether thiodicarb has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. For the purposes of this tolerance action, therefore, EPA has not assumed that thiodicarb has a common mechanism of toxicity with other substances. However, the Agency has determined that thiodicarb has a metabolite which is a registered pesticide, methomyl. Therefore, for this tolerance determination, methomyl residues resulting from applications of both thiodicarb and methomyl will be considered in a cumulative risk assessment and compared to appropriate toxicological endpoints for methomyl.

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

In examining aggregate exposure, FQPA directs EPA to take into account available information concerning exposures from pesticide residues in food and other exposures or which there is reliable information. These other exposures include drinking water and non-occupational exposures, e.g., to pesticides used in and around the home. Risk assessments for aggregate exposure consider both short-term and long-term (chronic) exposure scenarios considering the toxic effects which would likely be seen for each exposure duration.

Thiodicarb is a food use chemical. There are no residential (non-occupational) uses of thiodicarb; therefore, the considerations for aggregate exposure are those from food and drinking water.

1. *Acute risk*. The registrant provided an acute dietary Monte Carlo distributional risk assessment which combined residues of methomyl from the application of thiodicarb and residues of methomyl from the application of methomyl . The methomyl acute dietary NOEL of 6 mg/kg/day was used to calculate the MOE.

Since methomyl, rather than thiodicarb, per se is expected in ground and surface water as a result of thiodicarb applications, an acute aggregate risk from thiodicarb residues includes only risks from food. This assessment is discussed in the previous section under risk characterization for thiodicarb.

Acute exposures to methomyl residues from all sources (food and water, from thiodicarb and methomyl applications) will be aggregated and compared to the methomyl acute dietary NOEL. Using exposure estimates provided by the registrant, EPA estimated MOEs for various U.S. subpopulations based on acute effects and 24-hour intervals using a NOEL = 6 mg/kg BW/day. This includes residues from methomyl in food as a result of application of thiodicarb, from methomyl in food as a result of application of methomyl, and from methomyl in water. See Table 2.

TABLE 2. EPA-ESTIMATED MARGINS OF EXPOSURE (MOEs)

| Population Group percentile | Food | | Food and Water Combined | |
|---|---|---|---|---|
| | 24 hour interval | | 24 hour interval | |
| | mg/kg BW/day | MOE | mg/kg BW/day | MOE |
| **U.S. Population** | | | | |
| 95th | 0.000349 | 017192 | 0.001206 | 04975 |
| 99th | 0.001099 | 5460 | 0.001956 | 3067 |
| 99.9th | 0.006577 | 0912 | 0.007434 | 807 |
| **Infants** | | | | |
| 95th | 0.000215 | 27907 | 0.003215 | 1866 |
| 99th | 0.000874 | 6865 | 0.003874 | 1549 |
| 99.9th | 0.007940 | 756 | 0.01094 | 548 |
| **Children 1-6 years** | | | | |
| 95th | 0.000482 | 12448 | 0.003482 | 1723 |
| 99th | 0.002108 | 2846 | 0.005108 | 1175 |
| 99.9th | 0.014396 | 417 | 0.017396 | 345 |

Overall, these estimates are likely to be conservative estimates of the MOE. For example, it assumes that residues, when present, are present as a result of application at the maximum permitted level and observance of the minimum PHI. No reduction as a result of transport time from farm gate to consumer is assumed to occur. Also, no further reduction of residues through washing, peeling, or cooking at the producer or consumer level is assumed to occur. EPA concludes that sufficient margins of exposure exist at various high-end percentile exposure levels of interest (e.g., 95th, 99th, and 99.9th percentile values) and that there are no acute concerns associated with potential residues of methomyl (resulting from use of either thiodicarb or methomyl) in foods or drinking water.

2. *Chronic risk*. Chronic exposures to methomyl residues from all sources (food and water, from thiodicarb and methomyl applications) will be aggregated and compared to the methomyl reference dose. Therefore aggregate chronic risk for thiodicarb residues includes only risks from food and is shown in the previous section.

Results of the chronic exposure analysis show that no single subpopulation exceeded 7% of the RfD. The two most significantly exposed subpopulations are non-nursing infants (<1 year old) and all infants with 6.5% and 5.2% of the RfD occupied, respectively. For the overall U.S. population, only 1.9% of the RfD was occupied).

The aggregated chronic exposure from methomyl in food as a result of application of thiodicarb, from methomyl in food as a result of application of methomyl, and from methomyl in water is shown in Table 3 below.

TABLE 3. CHRONIC AGGREGATE EXPOSURE

| Population Subgroup | Dietary %RfD[a] | Water %RfD | Total[b] |
|---|---|---|---|
| U. S. General. | 1.9 | 9 | 11 |
| Children (1 to 6). | 2.7 | 33 | 36 |

TABLE 3. CHRONIC AGGREGATE EXPOSURE—Continued

| Population Subgroup | Dietary %RfD[a] | Water %RfD | Total[b] |
|---|---|---|---|
| Infants .... | 6.5 | 33 | 40 |

[a] Dietary % RfD includes methomyl residues from application of thiodicarb and methomyl.

[b] Although the Novigen chronic analyses incorporated exposure to both food and water, water concentrations were assumed in their analyses to be 4 ppb. The Agency believes that 26 ppb is a more appropriate estimate. Therefore, chronic water exposure were calculated independently by the Agency using the 26 ppb estimate. The total exposure reflected here incorporates both of these estimates and therefore slightly overestimates the chronic risk.

3. *Short- and intermediate-term risk*. Short- and intermediate-term risk analysis is conducted when there may be primary dermal and inhalation exposure which could result, for example, from residential pesticide applications. Since there are no residential uses of thiodicarb, EPA does not believe that there will be any exposure or risk associated with non-occupational, non-water uses.

*E. Aggregate Cancer Risk for U.S. Population*

Thiodicarb is a Group B2 carcinogen (probable carcinogenic effects); methomyl is a Group E carcinogen (no carcinogenic effects likely). Aggregated cancer risks are equal to the risks from thiodicarb; there is no cancer risk added from methomyl.

No aggregate cancer risk assessment is required because methomyl is not a carcinogen and methomyl, rather than thiodicarb, *per se*, is expected in ground and surface water.

*F. Aggregate Risks and Determination of Safety for Infants and Children*

1. *Safety factor for infants and children*— i. *Thiodicarb*— a. *In general*. In assessing the potential for additional sensitivity of infants and children to residues of thiodicarb, EPA considered data from developmental toxicity studies in the rat, mice, 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 to the mother during prenatal development. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

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

b. *Developmental toxicity studies*. In a rat developmental toxicity study, pregnant Charles River CD COBS rats were administered thiodicarb via gavage on gestation days 6-19 at dose levels of 0 (vehicle 0.5% methocel), 10, 20, and 30 mg thiodicarb/kg body weight/day. In another rat developmental toxicity study, pregnant Fisher 344 rats were dosed via the diet on (*1*) gestation days 6 to 15 or (*2*) gestation days 0-20 at dose levels of 0.5, 1.0, 3.0, and 100 mg thiodicarb (>99%)/kg body weight/day. When these two studies are considered together, the maternal toxicity NOEL is 10 mg/kg/day, and the maternal toxicity LOEL is 20 mg/kg/day, based on clinical signs (tremors, inactivity). The developmental toxicity NOEL is 3 mg/kg/day, and the LOEL is 10 mg/kg/day, based on decreased fetal body weights and increased incidence of litters and fetuses with developmental variations which included unossification of sternebrae #5 and/or #6 and other sternebrae (MRIDs 00043739, 00043740, 00043741, 00053254, 00053255, 00053256).

In a developmental toxicity study, artificially-inseminated New Zealand white rabbits were administered thiodicarb via gavage on gestation days 6 through 19 at dose levels of 0 (vehicle, 0.5% aqueous methylcellulose), 5, 20, and 40 mg/kg/day. The maternal toxicity NOEL was 20 mg/kg/day, and the maternal toxicity LOEL was 40 mg/kg/day, based on reduced body-weight gain and food consumption. The developmental toxicity NOEL was 40 mg/kg/day, the highest dose tested (MRIDs 00159814, 40280001).

In a developmental toxicity study, Charles River CD-1 mice were administered thiodicarb on gestation days 6 through 16 via gavage at dose levels of 0 (vehicle 0.5% methocel), 50, 100, and 200 mg Thiodicarb/kg body weight/day. The maternal toxicity NOEL was 100 mg/kg/day, and the maternal toxicity LOEL was 200 mg/kg/day, based on increased mortality. The developmental toxicity NOEL was 200 mg/kg/day, the highest dose tested (MRIDs 00043742, 00043743, 00053257, 00053258).

c. *Reproductive toxicity study*. In a two-generation reproduction study, Crl:CD BR/VAF/Plus rats were fed doses of 0, 5, 15, and 45 mg/kg/day of thiodicarb. The reproductive/developmental toxicity NOEL is 5 mg/kg/day, and the reproductive/developmental toxicity LOEL is 15 mg/kg/day, based on decreased fetal body weight and viability. The systemic NOEL is 5 mg/kg/day and the systemic LOEL is 15 mg/kg/day, based on decreased body weight/gain and food consumption in both sexes (MRIDs 42381301, 42381302, 42735101).

d. *Pre- and post-natal sensitivity*. There is no evidence of additional sensitivity to offspring following pre- and/or postnatal exposure to thiodicarb. In the two-generation reproduction study in rats, reproductive/developmental effects in pups (decreased body weight and viability) were observed only at dietary levels which were toxic in the parental animals, as evidenced by decreased body weight and food consumption. In the prenatal developmental toxicity studies in mice and rabbits, no developmental toxicity was observed, even at maternally toxic doses. In rats, two prenatal developmental toxicity studies were conducted, and based on the combined results of these studies, the developmental NOEL of 3 mg/kg/day was determined. This developmental NOEL was based upon decreased fetal body weight and increased incidence of delayed ossification in the sternebrae and was lower than the maternal NOEL of 10 mg/kg/day, which was based upon clinical signs of tremors and inactivity. Although these results could indicate an additional sensitivity of offspring to prenatal exposure to thiodicarb, the results are derived from two separate studies, using two different strains of rat (Sprague-Dawley and Wistar) which could alter the fetal response to prenatal exposure. Additionally, the developmental NOEL was identified in the second prenatal study, while all other NOELs and LOELs were identified in the first study. The dose level at which the developmental NOEL was established is, in many ways, an artifact of dose selection, since the next higher

dose was 33 times greater than that which demonstrated no fetal effects. If a wide spectrum of dose levels had been selected for testing in this strain of rat, it is very possible that no indication of additional fetal sensitivity would have been observed (as they were not in the other two studies).

e. *Conclusion*. Although there is a data gap (acute neurotoxicity study), EPA has determined that this is simply a confirmatory study. Other than this study, the database is complete. While tremors and inactivity were observed in one developmental study, other instances of neurotoxic behavior have not been observed in the remaining studies. There is no evidence of increased sensitivity to infants or children. FQPA directs the Agency to utilize an additional tenfold margin of safety to protect the health of infants and children unless the Agency concludes based on reliable data that a different margin will be safe for infants and children. Based on the considerations outlined above, the Agency has concluded that there is reliable data demonstrating that an uncertainty factor of 100 is safe for infants and children and that an additional 10x margin of safety is not necessary.

ii. *Methomyl*— a. *In general*. In assessing the potential for additional sensitivity of infants and children to residues of methomyl, EPA considered data from developmental toxicity studies in the rat, mice, and rabbit and a two-generation reproduction study in the rat.

b. *Developmental toxicity studies*. Methomyl (99 - 100%) was administered to 25 presumed pregnant Charles River-CD (ChR-CD) rats/group in the diet at concentrations of 0, 50, 100 and 400 ppm (0, 4.9, 9.4 and 33.9 mg/kg/day) on gestation days 6 through 16. The data did not reveal any apparent developmental toxicity. The NOEL for maternal toxicity is 100 ppm (9.4 mg/kg/day) and the LOEL is 400 ppm (33.9 mg/kg/day) based on decreased body weight gain and food consumption during gestation. The NOEL for developmental toxicity is 400 ppm (33.9 mg/kg/day) (MRID 00008621).

Methomyl (98.7%) was administered via stomach tube to 20 presumed pregnant New Zealand white (DLI:NZW) rabbits per group (19 in the high-dose group) at dosages of 0, 2, 6 and 16 mg/kg/day on gestation days 7 through 19. Clinical signs indicated neurotoxic effects in high-dose rabbits. There was no evidence of developmental toxicity in this study. The NOEL for developmental toxicity is 16 mg/kg/day. The NOEL for maternal toxicity is 6 mg/kg/day and the LOEL is 16 mg/kg/day based on mortalities and clinical signs (MRID 00131257).

c. *Reproductive toxicity study*. Sprague-Dawley rats in the $F_0$ parental generation were fed methomyl at dose levels of 0, 75, 600 or 1200 ppm (0, 3.75, 30, or 60 mg/kg/day, respectively, based on the standard conversion ratio). The $F_1$ offspring were treated at the same dosages. There was a dose-related increase in clinical signs involving the nervous system during the first few weeks of the study and the incidence of alopecia was increased in the 600 and 1,200 ppm group animals. The NOEL for systemic toxicity is 75 ppm (3.75 mg/kg/day) and the LOEL is 600 ppm (30 mg/kg/day) based on decreased body weight and food consumption and altered hematology parameters. The NOEL for reproductive toxicity is 75 ppm (3.75 mg/kg/day) and the LOEL is 600 ppm (30 mg/kg/day) based on decreases in both the mean number of live pups and mean body weights of offspring (MRID 43250701).

d. *Pre- and post-natal sensitivity*. In the rat developmental toxicity study the maternal NOEL is less than the developmental NOEL. In the rabbit developmental toxicity study there was no evidence of developmental toxicity. In the reproductive toxicity study the systemic NOEL is equal to the reproductive NOEL.

e. *Conclusion*. For calculating the MOE, an extra safety factor of 3 will be used in addition to the usual 100 due to the lack of acute and subchronic neurotoxicity studies (data gaps) as well as the severity of effects (death in 1-3 days) seen at the 16 mg/kg/day dose. Unlike thiodicarb, the two neurotoxicity studies on methomyl are critical data gaps based on the fact that neurotoxicity has been demonstrated in animals studies in two species (dog, rabbit) and by both the oral and dermal routes of exposure.

There is no evidence of increased sensitivity to infants or children. FQPA directs the Agency to utilize an additional tenfold margin of safety to protect the health of infants and children unless the Agency concludes based on reliable data that a different margin will be safe for infants and children. Based on the considerations outlined above, the Agency has concluded that there is reliable data demonstrating that an uncertainty factor of 300 is protective of infants and children and that an additional margin of safety is not necessary. The 300 uncertainty factor is composed of the interspecies uncertainty factor of 10, the intraspecies uncertainty factor of 10, and an additional factor of 3 to compensate for the lack of acute and subchronic neurotoxicity studies as well as the severity of effects (death in 1-3 days) seen at the 16 mg/kg/day dose.

2. *Acute risk*. For thiodicarb, to estimate acute dietary exposure, the registrant conducted Monte Carlo simulations for children (1 to 6 years) and infants. Acute dietary exposure estimates at the 99.9 percentile of exposure for children (1 to 6 years) and infants resulted in MOEs of 439 and 946, respectively. The results of the acute exposure analysis indicate that there are adequate Margins of Exposure (MOEs) greater than 100 for infants and children for thiodicarb.

For methomyl, for acute aggregate risk (from methomyl in food as a result of application of thiodicarb, from methomyl in food as a result of application of methomyl, and from methomyl in water), the dietary exposure number ($6.57 \times 10^{-3}$) from a Novigen Monte Carlo analysis and the acute water exposure number ($8.57 \times 10^{-4}$) were combined and resulted in an aggregate exposure of $7.43 \times 10^{-3}$. When compared against the methomyl NOEL of 6 mg/kg/day the acute aggregate MOEs for children (1-6 years) and infants were 345 and 548, respectively. The results of the acute aggregate exposure analysis indicate that there are adequate MOEs greater than 300 for infants and children for methomyl.

3. *Chronic risk*. For methomyl, for chronic aggregate risk, exposures (from methomyl in food as a result of application of thiodicarb, from methomyl in food as a result of application of methomyl, and from methomyl in water) were combined and compared to the methomyl reference dose. The two most significantly exposed subpopulations are non-nursing infants (<1 year old) and children (1-6 years old) with 40% and 36% of the RfD occupied, respectively.

A thiodicarb, chronic dietary risk assessment was conducted using tolerance level residues and BEAD percent crop treated information. The chronic analysis indicates that exposure from the existing permanent and time-limited tolerances for children(1 to 6 years old) and infants, 36% and 14%, respectively, of the RfD would be consumed. Chronic dietary risk considering consumption of thiodicarb from food sources is not of concern.

4. *Short- or intermediate-term risk*. Short- and intermediate-term risk analysis is conducted when there may be primary dermal and inhalation exposure which could result, for example, from residential pesticide applications. Since there are no residential uses of thiodicarb, EPA does

not believe that there will be any exposure or risk for infants or children associated with non-occupational, non-water uses.

## III. Other Considerations

### *A. Metabolism In Plants and Animals*

The qualitative nature of the residue in plants is adequately understood based on soybean, tomato, cotton, sweet corn and peanut metabolism studies. The residues to be regulated in plants are thiodicarb and its metabolite methomyl.

The qualitative nature of the residue in animals is adequately understood based upon acceptable ruminant and poultry metabolism studies. The residues to be regulated in livestock are thiodicarb and its metabolite methomyl.

### *B. Analytical Enforcement Methodology*

Adequate analytical methodology is available for enforcement of tolerances of thiodicarb. Method I in the Pesticide Analytical Manual (PAM), Vol. II, is a GLC/sulfur specific flame photometric detector (FPD-S) method that has undergone a successful EPA method validation. The reported limit of detection is 0.02 ppm for plant commodities.

An enforcement analytical method for livestock commodities is not necessary since there are no significant animal feed items associated with the subject crops.

### *C. Magnitude of Residues*

Residues of thiodicarb or its metabolites are not expected to exceed 35 ppm in/on leafy vegetables (except *Brassicaa* vegetables) and 7 ppm in/on broccoli, cabbage, and cauliflower as a result of this use.

### *D. International Residue Limits*

There are no Codex, Canadian, or Mexican tolerances for thiodicarb in/on leafy vegetables, broccoli, cabbage or cauliflower. Therefore, there are no questions with respect to compatibility of U.S. tolerances with Codex MRLs.

## IV. Conclusion

Therefore, the tolerance is established for combined residues of thiodicarb and its metabolite methomyl in broccoli at 7 ppm, cabbage at 7 ppm, cauliflower at 7 ppm, and leafy vegetables (except *Brassica* vegetables) at 35 ppm.

## V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by October 22, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

## VI. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300541] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

## VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. 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). 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, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), 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. 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. The factual basis for the Agency's generic certification for tolerance actions was published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

## VIII. 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 Parts 180 and 186

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

Dated: August 15, 1997.

**Stephen L. Johnson,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

1. In part 180:

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

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

b. By revising § 180.407 to read as follows:

### § 180.407 Thiodicarb; tolerances for residues.

(a) *General* . Tolerances are established for the combined residues of the insecticide thiodicarb (dimethyl *N*,*N*'-[thiobis[[(methylimino)carbonyloxy]] bis[ethanimidothioate]) and its metabolite methomyl (*S*-methyl *N*-[(methylcarbamoyl) oxy]thioacetimidate) in or on the following food commodities or groups. The time-limited tolerances expire and are revoked on the dates listed in the following table:

| Commodity | Parts per million | Expiration/revocation date |
|---|---|---|
| Broccoli | 7.0 | None |
| Cabbage | 7.0 | None |
| Cauliflower | 7.0 | None |
| Corn, sweet grain (K + CWHR) | 2.0 | None |
| Cottonseed | 0.4 | None |
| Cottonseed hulls | 0.8 | None |
| Leafy vegetables (except *Brassica* vegetables) | 35 | None |
| Soybean hulls | 0.8 | None |
| Soybeans | 0.2 | None |

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

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

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

## PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

**Authority**: 21 U.S.C. 342, 348, and 701.

### § 186.5650 [Removed]

b. Section 186.5650 is removed.

[FR Doc. 97–22397 Filed 8–21–97; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[MM Docket No. 96–10; RM–8738, RM–8799, RM–8800, RM–8801]**

## Radio Broadcasting Services; Ada, Ardmore, and Comanche, OK, and Blue Ridge, Bridgeport, Eastland, Farmersville, Flower Mound, Greenville, Henderson, Jacksboro, Mineola, Mt. Enterprise, Sherman and Tatum, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petition for reconsideration.

**SUMMARY:** This document dismisses a petition for reconsideration filed by Gleiser Communications, Inc. and a Joint Emergency Motion for Stay of Filing Window filed by Farmersville Radio Group, Gleiser Communications, Inc., Hunt Broadcasting, Inc. and Cowboy Broadcasting, L.L.C. The original proceeding reallotted and substituted broadcast channels or modified authorizations at Ada, Ardmore, and Comanche, Oklahoma, and Bridgeport, Eastland, Farmersville, Flower Mound, Henderson, Jacksboro, Mineola, Mt. Enterprise, Sherman, and Tatum, Texas. It also denied allotments at Blue Ridge and Greenville, Texas. See 62 FR 4660, January 31, 1997. With this action, the proceeding is terminated.

**EFFECTIVE DATE:** August 22, 1997.

**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Mass Media Bureau, (202) 418–2177.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Memorandum Opinion and Order in MM Docket No. 96–10, adopted August 6, 1997, and released August 15, 1997. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The

complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Suite 140, Washington, DC. 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Douglas W. Webbink,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 97–22115 Filed 8–21–97; 8:45 am]

BILLING CODE 6712–01–P

# Proposed Rules

Federal Register
Vol. 62, No. 163
Friday, August 22, 1997

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 97–CE–48–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The New Piper Aircraft, Inc. Models PA–31, PA–31–300, PA–31–325, and PA–31–350 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 The New Piper Aircraft, Inc. (Piper) Models PA–31, PA–31–300, PA–31–325, and PA–31–350 airplanes. The proposed AD would require replacing the lower wing splice plate and reworking the lower spar caps. The proposed AD results from numerous reports of fretting and cracking of the lower wing splice plates on Piper PA–31 series airplanes in Australia, and a report of one incident in the United States. The actions specified by the proposed AD are intended to prevent failure of the lower wing splice plate caused by fretting and cracking, which could result in loss of control of the airplane.

**DATES:** Comments must be received on or before October 30, 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–48–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.

Service information that applies to the proposed AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

**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–48–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–48–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

### Discussion

The FAA has received numerous reports of fretting and cracking of the lower wing splice plates on Piper PA–31 series airplanes in Australia, and a report of one incident in the United States. The lower wing spar splice plate on these airplanes is located at buttock line (BL) 0 and connects to the right and left wing lower spar caps. The fretting and cracking were discovered on the upper surface of the lower wing splice plates. The fretting is occurring because a sharp (unrounded and unchamfered) edge of the lower wing spar caps is rubbing against the upper surface of the lower wing spar plates. The residual stresses caused by the fretting could induce cracking in this area on the lower wing splice plates.

This condition, if not corrected in a timely manner, could result in failure of the lower wing splice plate with consequent loss of control of the airplane.

### Relevant Service Information

Piper has issued Service Bulletin No. 1003, dated June 16, 1997, which specifies replacing the wing spar splice plate and reworking the lower spar caps. The following kits include the parts and procedures necessary for accomplishing this replacement and rework:

—Main Spar Splice Plate Replacement (Lower) Kit, Piper part number 766–640, which applies to Models PA–31, PA–31–300, and Piper PA–31–325 airplanes; and

—Main Spar Splice Plate Replacement (Lower) Kit, Piper part number 766–641, which applies to Model PA–31–350 airplanes.

### The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the referenced service information, the FAA has determined that AD action should be taken to prevent failure of the lower wing splice plate caused by fretting and cracking, which could result in loss of control of the airplane.

### Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Piper Models PA–31, PA–31–300, PA–31–325, and PA–31–350 airplanes of the same type design, the proposed AD would require replacing the lower wing spar splice plate and reworking the lower spar caps.

Accomplishment of the replacement would be in accordance with the service information referenced in the ''Relevant Service Information'' section of this document.

### Cost Impact

The FAA estimates that 1,700 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 8 workhours per airplane to accomplish the proposed replacement, and that the average labor rate is approximately $60 an hour. Parts cost approximately $210 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,173,000, or $690 per airplane.

Piper has informed the FAA that parts have been distributed to equip 1 affected airplane. Presuming that this set of parts is installed on an affected airplane, the cost impact of the proposed AD would be reduced by $690, from $1,173,000 to $1,172,310.

### 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 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**The New Piper Aircraft, Inc.:** Docket No. 97–CE–48–AD.

*Applicability:* The following airplane model and serial numbers, certificated in any category:

| Models | Serial Nos. |
|---|---|
| PA–31, PA–31–300, and PA–31–325. | 31–2 through 31–8312019 |
| PA–31–350 ..... | 31–5001 through 31–8553002 |

**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 (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 upon the accumulation of 2,500 hours time-in-service (TIS) on the lower spar splice plate or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished.

To prevent failure of the lower wing splice plate caused by fretting and cracking, which could result in loss of control of the airplane, accomplish the following:

(a) Replace the lower wing spar splice plate and rework the lower spar caps in accordance with the instructions included in the following kit, as applicable, and as referenced in Piper Service Bulletin No. 1003, dated June 16, 1997:

(1) Main Spar Splice Plate Replacement (Lower) Kit, Piper part number (P/N) 766–640, which applies to Models PA–31, PA–31–300, and Piper PA–31–325 airplanes; and

(2) Main Spar Splice Plate Replacement (Lower) Kit, Piper P/N 766–641, which applies to Model PA–31-350 airplanes.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

(d) All persons affected by this directive may obtain copies of the documents referred to herein upon request to The New Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; or may examine this document 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 August 15, 1997.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–22336 Filed 8–21–97; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 94–AWA–1]**

## Proposed Modification of the Phoenix Class B Airspace Area; Arizona

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Supplemental notice of proposed rulemaking (SNPRM).

**SUMMARY:** On February 4, 1997, the FAA published a Notice of Proposed Rulemaking (NPRM) which proposed to modify the Phoenix (PHX), AZ, Class B airspace area. Specifically, that action proposed to: Reconfigure several area boundaries; create new areas; and raise and/or lower the floors of several of the existing areas. In the NPRM, several subareas of the PHX Class B airspace area were inadvertently plotted and described using incorrect bearings from the Phoenix Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC). This document corrects that error and amends the proposed legal description of the PHX Class B airspace area by changing the incorrect bearings to reflect the actual intentions of the FAA.

**DATES:** Comments must be received on or before September 22, 1997.

**ADDRESSES:** Send comments on the proposal in triplicate to the Federal Aviation Administration, Office of the

Chief Counsel, Attention: Rules Docket, AGC–200, Airspace Docket No. 94–AWA–1, 800 Independence Avenue, SW, Washington, DC 20591.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW, Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Systems Management Branch Office, 15000 Aviation Boulevard, Hawthorne, CA, 90261.

**FOR FURTHER INFORMATION CONTACT:** William C. Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

The comment period for the NPRM for the PHX Class B airspace area modification expired on May 2, 1997. However, interested parties are invited to comment on the changes to the NPRM as detailed in this SNPRM 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 changes to the proposal as presented in this SNPRM. 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. 94-AWA–1.'' 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 SNPRM 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 SNPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

## Background

On February 4, 1997, the FAA proposed to modify the PHX Class B airspace area (62 FR 5188). The NPRM proposed to reconfigure several area boundaries; create new areas; and raise and/or lower the floors of several of the existing areas. On April 2, 1997, the FAA reopened the comment period (62 FR 15635) at the request of several user organizations as additional time was necessary to fully analyze the proposal and make comments. The comment period closed on May 2, 1997.

The FAA has subsequently discovered that several subareas of the PHX Class B airspace area were inadvertently plotted and described using incorrect bearings from the Phoenix VORTAC.

On aeronautical charts, bearings to or from a point are labeled relative to magnetic north. In airspace legal descriptions, however, the true north equivalent of each bearing is published. In the Phoenix, AZ, area, the variance between magnetic north and true north is approximately 12°; therefore, to convert a bearing from magnetic to true, one must add 12°.

With regard to subareas D, H, I, J, and K of the proposed modified PHX Class B airspace area, bearings intended as magnetic were erroneously plotted and published as true; no conversions were made. This error resulted in bearings, and geographical coordinates derived therefrom, being plotted 12° counterclockwise, relative to the Phoenix VORTAC, from their intended positions.

The purpose of this document is to correct the proposed legal description of the PHX Class B airspace area to reflect the actual intentions of the FAA. Only those subareas of the PHX Class B airspace area affected by the error are addressed in this document.

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR part 71.1. The Class B airspace area listed in this document would be published subsequently in the Order.

## The Proposal

On February 4, 1997, the FAA proposed to modify the PHX Class B airspace area. This document proposes to alter the February 4, 1997, proposal by amending the legal description of certain subareas of the PHX Class B airspace area to reflect the actual intentions of the FAA. Specifically, this action proposes to alter the February 4, 1997, proposal by changing the bearings from the Phoenix VORTAC which are used to describe subareas D, H, I, J, and K.

This proposal would change each affected bearing by adding 12° to the previously published bearing; this reflects the conversion factor from magnetic to true which was previously omitted. The result of adding 12° to each affected bearing would be to shift subareas I, J, K, and the eastern portion of H, 12° clockwise relative to the PHX VORTAC.

The practical effects of this change would be to (1) eliminate approximately 23 square miles of airspace north of PHX, in the vicinity of Sky Ranch Carefree Airport, from the previous proposal to modify the PHX Class B airspace area; and (2) to add to the previous proposal approximately 23 square miles of airspace south of PHX in the area southwest of Bapchule, AZ.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this 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 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of 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 3000—Class B Airspace*

* * * * *

**AWP AZ B Phoenix, AZ [Revised]**

Phoenix Sky Harbor International Airport (Primary Airport)
(lat. 33°26′10″N., long. 112°00′34″W.)
Phoenix VORTAC (lat. 33°25′59″N., long. 111°58′13″W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL beginning at the intersection of 51st Avenue and Camelback Road (lat. 33°30′34″N., long. 112°10′08″W.), extending east along Camelback Road to the intersection of Camelback Road and Dobson Road (lat. 33°30′07″N., Long. 111°52′26″W.), thence south on Dobson Road to the intersection of Dobson Road and Guadalupe Road (lat. 33°21′49″N., long. 111°52′35″W.), thence west on Guadalupe Road to the intersection of Guadalupe Road and Interstate 10 (lat. 33°21′50″N., long. 111°58′08″W.), thence direct to lat. 33°21′48″N., long. 112°06′30″W., thence west on Guadalupe Road to the intersection of Guadalupe Road and 51st Avenue (lat. 33°21′46″N., long. 112°10′09″W.), thence north on 51st Avenue to the point of beginning.

Area B. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of 99th Avenue and Camelback Road (lat. 33°30′29″N., long. 112°16′22″W.), thence east on Camelback Road to the intersection of Camelback Road and 51st Avenue (lat. 33°30′34″N., long. 112°10′08″W.), thence south on 51st Avenue to the intersection of 51st Avenue and Guadalupe Road (lat. 33°21′46″N., long. 112°10′09″W.), thence direct to lat. 33°21′48″N., long. 112°06′30″W., thence south direct to lat. 33°18′18″N., long. 112°06′30″W., thence west on Chandler Boulevard to the intersection of Chandler Boulevard and the Gila River (lat. 33°18′18″N., long. 112°13′11″W.), thence northwest along the Gila River to the intersection of the Gila River and 99th Avenue, (lat. 33°22′38″N., long. 112°16′21″W.), thence north along the extension of 99th Avenue to the point of beginning.

Area C. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of Guadalupe Road and Interstate 10 (lat. 33°21′50″ N., long. 111°58′98″ W.), thence south on Interstate 10 to the intersection of Interstate 10 and Chandler Boulevard (lat. 33°18′19″ N., long. 111°58′21″ W.), thence east on Chandler Boulevard to the intersection of Gilbert Road and Chandler Boulevard (lat. 33°18′19″ N., long. 111°47′22″ W.), thence north on Gilbert Road to the intersection of Indian Bend Road (lat. 33°32′20″ N., long. 111°47′23″ W.), thence west on Indian Bend Road to the intersection of Indian Bend Road and Pima/Price Road (lat. 33°32′18″ N., long. 111°53′29″ W.), thence south on Pima/Price Road to the intersection of Pima/Price Road and Camelback Road (lat. 33°30′07″ N, long. 111°53′29″ W.), thence east on Camelback Road to Dobson Road (lat. 33°30′07″ N, long. 111°52′26″ W.), thence south on Dobson Road to the intersection of Dobson Road and Guadalupe Road (lat. 33°32′49″ N., long. 111°52′35″ W.), thence west on Guadalupe Road to the point of beginning.

Area D. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of Cactus Road and the 20-mile arc of the Phoenix VORTAC (lat. 33°35′35″ N., long. 11137′13″ W.), thence clockwise along the 20-mile arc of the Phoenix VORTAC to the intersection of the 20-mile arc of the Phoenix VORTAC and the Phoenix VORTAC 091°T(079°M) radial (lat. 33°25′36″ N., long. 111°34′19″ W.), thence west along the Phoenix VORTAC 091°T(079°M) radial to the intersection of the Phoenix VORTAC 091°T(079°M) radial and the 15-mile arc of the Phoenix VORTAC (lat. 33°25′42″ N., long. 111°40′17″ W.), thence south along the 15-mile arc of the Phoenix VORTAC to the intersection of the Phoenix VORTAC 15-mile arc and the Phoenix VORTAC 127°T(115°M) radial (lat. 33°16′55″ N., long. 111°43′55″ W.), thence southeast along the Phoenix VORTAC 127°T(115°M) radial to the intersection of the Phoenix VORTAC 127°T(115°M) radial and the Phoenix VORTAC 20-mile arc (lat. 33°13′54″ N., long. 111°39′10″ W.), thence clockwise along the Phoenix VORTAC 20-mile arc to the intersection of the Phoenix VORTAC 20-mile arc and Riggs Road (lat. 33°12′58″ N., long. 111°40′04″ W.), thence west along Riggs Road to the intersection of the Lila River and Valley Road (lat. 33°15′20″ N., long. 122°10′10″ W.), thence northwest along the Gila River to the intersection of the Gila River and Chandler Boulevard (lat. 33°18′18″ N., long. 112°12′03″ W.), thence east to lat. 33°18′18″ N., long. 112°06′30″ W., thence north to lat. 33°21′48″ N., long. 112°06′30″ W., thence east to the intersection of Guadalupe Road and Interstate 10 (lat. 33°21′50″ N., long. 111°58′08″ W.), thence south on Interstate 10 to the intersection of Interstate 10 and Chandler Boulevard (lat. 33°18′19″ N., long. 111°58′21″ W.), thence east along Chandler Boulevard to the intersection of Chandler Boulevard and Gilbert Road (lat. 33°18′18″ N., long. 111°47′22″ W.), thence north along Gilbert Road to the intersection of Indian Bend Road (lat. 33°32′20″ N., long. 111°47′23″ W.), thence west along Indian Bend Road to the intersection of Pima/Price Road (lat. 33°32′18″ N., long. 111°53′29″ W.), thence south along Pima/Price Road to the intersection of Pima/Price Road and Camelback Road (lat. 33°30′07″ N., long. 111°53′29″ W.), thence west along Camelback Road to the intersection of 99th Avenue (lat. 33°30′29″ N., long. 112°19′20″ W.), thence south on 99th Avenue to the intersection of 99th Avenue and the Gila River (lat. 33°19′55″ N., long. 112°16′21″ W.), thence southeast along the Gila River to the intersection of the Gila River and Chandler Boulevard (lat. 33°18′18″ N., long. 112°12′03″ W.), thence west along Chandler Boulevard to the intersection of an extension of Chandler Boulevard and Litchfield Road (lat. 33°18′18″ N., long. 112°21′29″ W.), thence north along Litchfield Road to the intersection of Litchfield Road and Camelback Road (lat. 33°30′29″ N., long. 112°21′29″ W.), thence east along Camelback Road to lat. 33°30′30″ N., long. 112°19′23″ W., thence direct to lat. 33°35′34″ N., long. 112°′55″ W., thence direct to lat. 33°36′35″ N., long. 112°13′38″ W., thence east along Thunderbird Road and Cactus Road to the intersection of Cactus Road and the 20-mile arc of the Phoenix VORTAC.

Area E. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at lat. 33°42′10″N., long. 112°13′05″W., beginning on the 20-mile arc of the Phoenix VORTAC, thence clockwise along the 20-mile arc of the Phoenix VORTAC to intersection of the Phoenix VORTAC 20-mile arc and Cactus Road (lat. 33°35′45″N., long. 111°38′30″W.), thence west on Cactus Road, to the intersection of Cactus Road and Thunderbird Road (lat. 33°36′35″N., long. 112°13′38″W.), thence direct to the point of beginning.

Area F. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of Riggs Road and the 20-mile arc of the Phoenix VORTAC (lat. 33°13′10″N., long. 111°40′04″W.), thence clockwise along the 20-mile arc of the Phoenix VORTAC to the intersection of the 20-mile arc of the Phoenix VORTAC and Valley Road (lat. 33°07′30″N., long. 112°08′40″W.), thence north along Valley Road to the intersection of Valley Road, Riggs Road and the Gila River (lat. 33°1′10″N., long. 112°09′58″W.), thence east along Riggs Road to the point of beginning.

Area G. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of the 25-mile arc of the Phoenix VORTAC and Camelback Road (lat. 33°30′30″N., long. 112°21′26″W.), thence east on Camelback Road to the intersection of Camelback Road

and Litchfield Road (lat. 33°30′29″N., long. 112°21′29″W.), thence south on Litchfield Road to the intersection of Litchfield Road and Chandler Boulevard (lat. 33°18′18″N., long. 112°21′29″W.), thence west along Chandler Boulevard to the intersection of the 25-mile arc of the Phoenix VORTAC (lat. 33°10′10″N., long. 112°26′34″W.), thence clockwise along the 25-mile arc of the Phoenix VORTAC to the point of beginning.

Area H. That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL beginning at a point at lat. 33°46′13″N., long. 112°15′51″W., on the 25-mile arc of the Phoenix VORTAC, thence clockwise along the 25-mile arc of the Phoenix VORTAC to the intersection of the 25-mile arc of the Phoenix VORTAC and Interstate 17 (lat. 33°49′30″N., long. 112°08′37″W.), thence south along Interstate 17 to the intersection of Interstate 17 and the 20-mile arc of the Phoenix VORTAC (lat. 33°44′31″N., long. 112°07′18″W.), thence counterclockwise along the 20-mile arc of the Phoenix VORTAC to lat. 33°41′41″N., long. 112°13′05″W., thence direct to the point of beginning; and that airspace beginning at the intersection of the 20-mile arc of the Phoenix VORTAC and the Phoenix VORTAC 017°T(005°M) radial (lat. 33°45′08″N., long. 111°51′12″W.), thence north along the Phoenix VORTAC 017°T(005°M) radial to the intersection of the Phoenix VORTAC 017°T(005°M) radial and the 25-mile arc of the Phoenix VORTAC (lat. 33°49′56″N., long. 111°49′26″W.), thence clockwise along the 25-mile arc of the Phoenix VORTAC to the intersection of the 25-mile arc of the Phoenix VORTAC and the Phoenix VORTAC 037°T(025°M) radial (lat. 33°45′58″N., long. 111°40′10″W.), thence southwest along the Phoenix VORTAC 037°T(025°M) radial to the intersection of the Phoenix VORTAC 037°T(025°M) radial and the 20-mile arc of the Phoenix VORTAC (lat. 33°41′58″N., long. 111°43′47″W.), thence counterclockwise along the 20-mile arc of the Phoenix VORTAC to the point of beginning.

Area I. That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of the 20-mile arc of the Phoenix VORTAC and the Phoenix VORTAC 127°T(115°M) radial (lat. 33°13′54″N., long. 111°39′10″W.), thence southeast along the Phoenix VORTAC 127°T(115°M) radial to the intersection of the Phoenix VORTAC 127°T(115°M) radial and the 25-mile arc of the Phoenix VORTAC (lat. 33°10′52″N., long. 111°34′25″W.), thence clockwise along the 25-mile arc of the Phoenix VORTAC to the intersection of the 25-mile arc of the Phoenix VORTAC and the Phoenix VORTAC 180°T(168°M) radial (lat. 33°00′56″N., long. 111°58′13″W.), thence north along the Phoenix VORTAC 180°T(168°M) radial to the intersection of the Phoenix VORTAC 180°T(168°M) radial and the 20-mile arc of the Phoenix VORTAC (lat. 33°05′57″N., long. 111°58′13″W.), thence counterclockwise along the 20-mile arc of the Phoenix VORTAC to the point of beginning.

Area J. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of the 15-mile arc of the Phoenix VORTAC and the Phoenix VORTAC 091°T(079°M) radial (lat. 33°25′42″N., long. 111°40′17″W.), thence east along the Phoenix VORTAC 091°T(079°M) radial to the intersection of the Phoenix VORTAC 091°T(079°M) radial and the 20-mile arc of the Phoenix VORTAC (lat. 33°25′36″N., long. 111°34′19″W.), thence clockwise along the 20-mile arc of the Phoenix VORTAC to the intersection of the 20-mile arc of the Phoenix VORTAC and the Phoenix VORTAC 127°T(115°M) radial (lat. 33°13′54″N., long. 111°39′10″W.), thence northwest along the Phoenix VORTAC 127°T(115°M) radial to the intersection of the Phoenix VORTAC 127°T(115°M) radial and the 15-mile arc of the Phoenix VORTAC (lat. 33°16′55″N., long. 111°43′55″W.), thence counterclockwise along the 15-mile arc of the Phoenix VORTAC to the point of beginning.

Area K. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of the 20-mile arc of the Phoenix VORTAC and the Phoenix VORTAC 037°T(025°M) radial (lat. 33°41′58″N., long. 111°43′47″W.), thence northeast along the Phoenix VORTAC 037°T(025°M) radial to the intersection of the Phoenix VORTAC 037°T(025°M) radial and the 25-mile arc of the Phoenix VORTAC (lat. 33°45′58″N., long. 111°40′10″W.), thence clockwise along the 25-mile arc of the Phoenix VORTAC to the intersection of the 25-mile arc of the Phoenix VORTAC and the Phoenix VORTAC 127°T(115°M) radial (lat. 33°10′52″N., long. 111°34′25″W.), thence northwest along the Phoenix VORTAC 127°T(115°M) radial to the intersection of the Phoenix VORTAC 127°T(115°M) radial and the 20-mile arc of the Phoenix VORTAC (lat. 33°13′54″N., long. 111°39′10″W.), thence counterclockwise along the 20-mile arc of the Phoenix VORTAC to the point of beginning.

* * * * *

Issued in Washington, DC, on August 12, 1997.

**Reginald C. Matthews,**

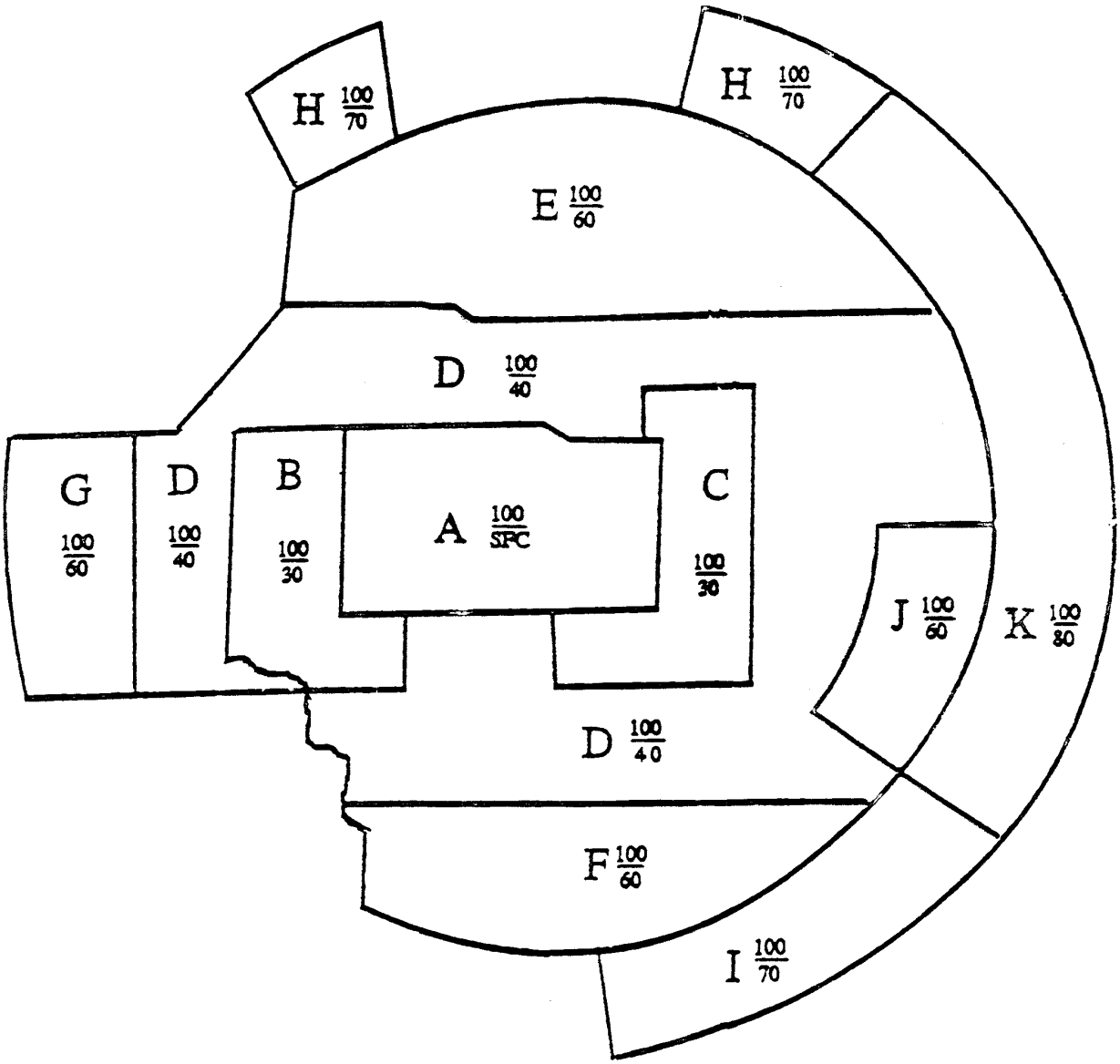
*Acting Program Director for Air Traffic Airspace Management.*

BILLING CODE 4910–13–P

**Note:** The following appendix will not appear in the Code of Federal Regulations.

**Appendix—Phoenix Class B Airspace Area**

PHOENIX CLASS B AIRSPACE AREA
FIELD ELEVATION 132 FEET
(NOT TO BE USED FOR NAVIGATION)




Prepared by the
FEDERAL AVIATION ADMINISTRATION
Publications Branch
ATP-210

[FR Doc. 97–22106 Filed 8–21–97; 8:45 am]
BILLING CODE 4910–13–C

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 97–AEA–34]**

## Proposed Establishment of Class E Airspace; Indianhead, MD

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would establish Class E Airspace at Indian Head, MD. The development of new Standard Instrument Approach Procedures (SIAP) at Maryland Airport based on the Global Positioning System (GPS) and VHF Omnidirectional Radio Range (VOR) has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above ground level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

**DATES:** Comments must be received on or before September 22, 1997.

**ADDRESSES:** Send comments on the proposed rule in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 97–AEA–34, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis T. Jordan, Jr., Airspace Specialist, Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AEA–34''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet AGL at Indian Head, MD. A GPS runway (RWY) 36 SIAP and a VOR A SIAP has been developed for Maryland Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate these SIAPs and for IFR operations at the airport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

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

## PART 71—[AMENDED]

1. The authority citation for 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.

**§ 71.1 [Amended]**

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

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

* * * * *

**AEA MD E5 Indian Head, MD [New]**

Maryland Airport, MD
(Lat. 38°36′01″N., long. 77°04′24″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Maryland Airport, excluding the portions that coincide with the Washington, DC, and Friendly, MD, Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on July 28, 1997.

**James K. Buckles,**

*Acting Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 97–22353 Filed 8–21–97; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 97–AEA–33]**

## Proposed Amendment to Class E Airspace; Summersville, WV

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the Class E airspace area at Summersville, WV. The development of new Standard Instrument Approach Procedures (SIAP) at the Summersville Airport based on the Global Positioning System (GPS) has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above ground level (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport.

**DATES:** Comments must be received on or before September 22, 1997.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 97–AEA–33, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430; telephone: (718) 553–4521.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis T. Jordan, Jr., Airspace Specialist, Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430; telephone: (718) 533–4521.

**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, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AEA–33.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the 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 this docket.

### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Summersville, WV. A GPS Runway (RWY) 22 SIAP for the Summersville Airport has been developed. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate this SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the Earth are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

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

## PART 71—[AMENDED]

1. The authority citation for 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.

**§ 71.1 [Amended]**

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

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

* * * * *

**AEA WV E5 Summersville, WV [Revised]**

Summersville Airport, WV
(Lat. 38°13′54″N., long. 80°52′15″W.)
Nicholas NDB
(Lat. 38°10′30″N., long. 80°55′12″W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Summersville Airport and within 4 miles each side of the 215° bearing from the Nicholas NDB extending from the 6.3-mile

radius to 9.6 miles southwest of the NDB and 4 miles each side of the 037° bearing from the Summersville Airport extending from the 6.3-mile radius to 11.5 miles northeast of the airport.

* * * * *

Issued in Jamaica, New York, on July 28, 1997.

**James K. Buckles,**

*Acting Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 97–22352 Filed 8–21–97; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 97–AEA–32]**

## Proposed Amendment to Class E Airspace; Wrightstown, NJ

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the Class E airspace area at Wrightstown, NJ. The development of new Standard Instrument Approach Procedures (SIAP) at the Flying W Airport, Lumberton, NJ, based on the Global Positioning System (GPS), has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above ground level (AGL) is needed to accommodate these SIAPs and for instrument flight rules (IFR) operations at the airport.

**DATES:** Comments must be received on or before September 22, 1997.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 97–AEA–32, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis T. Jordan, Jr., Airspace Specialist, Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430; telephone: (718) 553–4521.

**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, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AEA–32.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the 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 NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Wrightstown, NJ. A GPS RWY 19 SIAP and a GPS RWY 01 SIAP has been developed for the Flying W Airport, Lumberton, NJ. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate these SIAPs and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

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

## PART 71—[AMENDED]

1. The authority citation for 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.

**§ 71.1 [Amended]**

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

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

**AEA NJ E5 Wrightstown, NJ [Revised]**

Lakewood Airport, NJ

(Lat. 40°04′00″N., long. 74°10′40″W.)
McGuire AFB, NJ
(Lat. 40°00′56″N., long. 74°35′37″W.)
Trenton-Robbinsville Airport, NJ
(Lat. 40°12′50″N., long. 74°36′07″W.)
Allaire Airport, NJ
(Lat. 40°11′07″N., long. 74°07′23″W.)
Robert J. Miller Airpark, NJ
(Lat. 39°55′33″N., long. 74°17′33″W.)
South Jersey Regional Airport, NJ
(Lat. 39°56′34″N., long. 74°50′45″W.)
Flying W Airport, NJ
(Lat. 39°56′01″N., long. 74°48′23″W.)
Lakehurst (Navy) TACAN
(Lat. 40°02′13″N., long. 74°21′12″W.)
Colts Neck VOR/DME
(Lat. 40°18′42″N., long. 74°09′36″W.)
Coyle VORTAC
(Lat. 39°49′02″N., long. 74°25′54″W.)
Robbinsville VORTAC
(Lat. 40°12′08″N., long. 74°29′43″W.)

* * * * *

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Lakewood Airport and within a 10.5-mile radius of McGuire AFB and within an 11.3-mile radius of the Lakehurst (Navy) TACAN extending clockwise from the Lakehurst (Navy) TACAN 310° radial to the 148° radial and within 4.4 miles each side of the Coyle VORTAC 031° radial extending from the VORTAC to 11.3 miles northeast and within 2.6 miles southwest and 4.4 miles northeast of the Lakehurst (Navy) TACAN 148° radial extending from the TACAN to 12.2 miles southeast and within a 6.4-mile radius of Trenton-Robbinsville airport and within 5.7 miles north and 4 miles south of the Robbinsville VORTAC 278° and 098° radials extending from 4.8 miles west to 10 miles east of the VORTAC and within a 6.7-mile radius of Allaire Airport and within 1.8 miles each side of the Colts Neck VOR/DME 167° radial extending from the Allaire Airport 6.7-mile radius to the VOR/DME and within a 9.5-radius of Flying W Airport and within a 6.5-mile radius of Robert J. Miller Air Park and within 1.3 miles each side of the Coyle VORTAC 044° radial extending from the 6.5-mile radius of Robert J. Miller Air Park to the VORTAC and within a 6.4-mile radius of South Jersey Regional Airport, excluding the portions that coincide with the Berlin, NJ, Princeton, NJ, Linden, NJ, and North Philadelphia, PA, Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on July 28, 1997.

**James K. Buckles,**

*Acting Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 97–22351 Filed 8–21–97; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 97–AEA–31]**

## Proposed Amendment to Class E Airspace; Point Pleasant, WV

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the Class E airspace area at Point Pleasant, WV. The development of new Standard Instrument Approach Procedures (SIAP) at the Mason County Airport based on the Global Positioning System (GPS) has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above ground level (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport.

**DATES:** Comments must be received on or before September 22, 1997.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 97–AEA–31, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis T. Jordan, Jr., Airspace Specialist, Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430; telephone: (718) 553–4521.

**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, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AEA–31.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the 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 NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Point Pleasant, WV. A GPS RWY 25 SIAP for the Mason County Valley Airport has been developed. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate this SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to

keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

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

## PART 71—[AMENDED]

1. The authority citation for 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.

### § 71.1 [Amended]

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

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

* * * * *

**AEA WV E5 Point Pleasant, WV [Revised]**

Mason County Airport, Point Pleasant, WV
(Lat. 38°54′52″N., long. 82°05′55″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Mason County Airport and within 4 miles each side of the 059° bearing from the Mason County Airport extending from the 6.4-mile radius to 10 miles northeast of the airport excluding that portion that coincides with the Gallipolis, OH, and Ravenswood, WV, Class E airspace areas

* * * * *

Issued in Jamaica, New York, on July 28, 1997.

**James K. Buckles,**

*Acting Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 97–22350 Filed 8–21–97; 8:45 am]

BILLING CODE 4910–13–M

## FEDERAL TRADE COMMISSION

## 16 CFR Part 245

## Extension of Time; Guides for the Watch Industry

**AGENCY:** Federal Trade Commission.

**ACTION:** Extension of time for filing public comments.

**SUMMARY:** The Federal Trade Commission (the ''Commission'') requested public comments on June 18, 1997, 62 FR 33316, on proposed revisions to the Guides for Watch Industry (''the Guides''), 16 CFR Part 245. The Commission solicited comments until September 2, 1997. In response to a request from an industry group, the Commission grants an extension of the comment period.

**DATES:** Written comments will be accepted until October 1, 1997.

**ADDRESSES:** Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth & Pennsylvania Ave., NW., Washington, DC 20580. Comments should be identified as ''Guides for the Watch Industry—16 CFR Part 245—Comment.''

**FOR FURTHER INFORMATION CONTACT:** Constance M. Vecellio, Attorney, Federal Trade Commission, Washington, DC 20580, (202) 326–2966.

**SUPPLEMENTARY INFORMATION:** By letter dated August 1, 1997, counsel for the Federation of the Swiss Watch Industry (''Swiss Federation'') requested that the comment period be extended for thirty days, until October 1, 1997, because in a trade association such as the Swiss Federation, decision-making is by committee, an inherently time-consuming process, and because the original comment period included the traditional two week watch industry holiday.[1]

The Commission has determined that an extension of the comment period until October 1, 1997 is appropriate. Therefore, to allow all interested persons the opportunity to supply the Commission with written data, views and arguments concerning the Commission's review of the Guides, the Commission grants an extension of the comment period to October 1, 1997.

### List of Subjects in 16 CFR Part 245

Advertising, Trade practices, Watch bands, Watches.

**Authority:** 15 U.S.C. 41–58.

[1] A copy of the letter has been placed on the public record of this proceeding.

By direction of the Commission.

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 97–22349 Filed 8–21–97; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[REG–208151–91]**

**RIN 1545–AQ91**

## Rules for Property Produced in a Farming Business

**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 relating to the application of section 263A of the Internal Revenue Code of 1986 to property produced in a farming business. The regulations affect taxpayers engaged in the business of farming that grow or raise plants or animals. The text of those temporary regulations also serves as the text of these proposed regulations. This document provides notice of a public hearing on these proposed regulations.

**DATES:** Written comments must be received by November 20, 1997. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for November 19, 1997, must be received by October 29, 1997.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:R (REG–208151–91), room 5226, 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–208151–91), 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/comment.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Jan Skelton,

(202) 622–4970; concerning submissions and the hearing, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

## Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend Regulations on Income Taxes (26 CFR part 1). The regulations provide guidance with respect to the application of section 263A to property produced in a farming business.

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 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 the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. 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 written (a signed original and eight (8) copies) or electronic 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 Wednesday, November 19, 1997, at 10 a.m., at the Internal Revenue Building, 1111 Constitution Ave., N.W., Washington, DC, 20224. 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 comments at the hearing must submit written comments by November 20, 1997 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by October 29, 1997.

A period of ten 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.

Drafting Information: The principal author of these regulations is Jan Skelton of the Office of Assistant Chief Counsel (Income Tax & Accounting). 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 continues to read in part as follows:

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

**Par. 2.** Section 1.263A–0 is amended by:

1. Revising the introductory text.
2. Adding the entries for § 1.263A–4.

The addition and revision read as follows:

### § 1.263A–0 Outline of regulations under section 263A.

This section lists the paragraphs in §§ 1.263A–1 through 1.263A–4 and §§ 1.263A–8 through 1.263A–15.

* * * * *

*§ 1.263A–4 Rules for property produced in a farming business.*

[The text of the proposed entries for § 1.263A–4 in § 1.263A–0 is the same as the text of the entries for § 1.263A–4T in § 1.263A–0T published elsewhere in this issue of the **Federal Register**].

* * * * *

**Par. 3.** Section 1.263A–4 is amended by revising the section heading and adding new text to read as follows:

### § 1.263A–4 Rules for property produced in a farming business.

[The proposed text of § 1.263A–4 is the same as the text in § 1.263A–4T published elsewhere in this issue of the **Federal Register**].

**Michael P. Dolan,**

*Acting Commissioner of Internal Revenue.*

[FR Doc. 97–21770 Filed 8–21–97; 8:45 am]

BILLING CODE 4830–01–U

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 63

**[AD–FRL–5879–1]**

**RIN 2060–AC19**

## National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks; Proposed Rule Clarifications; Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule: Correction.

**SUMMARY:** On January 17, 1997, the EPA amended certain portions of the ''National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks.'' This rule is commonly known as the Hazardous Organic NESHAP or the HON. Among the changes made to the rule in that action, the EPA added a definition for ''enhanced biological treatment systems or enhanced biological treatment processes'' to the rule and made clarifying revisions to appendix C of part 63. This action proposes to revise this definition in order to clarify its meaning and proposes revisions to appendix C of part 63 to reflect the clarification of the definition for ''enhanced biological treatment systems or enhanced biological treatment processes.'' This action also proposes to revise the compliance demonstration procedures for biological treatment units to remove restrictions on the use of the batch test procedure.

These proposed amendments to the rule would not change the basic control requirements of the rule or the level of health protection it provides. The rule requires new and existing major sources to control emissions of hazardous air pollutants to the level reflecting application of the maximum achievable control technology.

**DATES:** *Comments.* Comments must be received on or before September 22, 1997, unless a hearing is requested by September 2, 1997. If a hearing is requested, written comments must be received by October 6, 1997.

*Public Hearing.* Anyone requesting a public hearing must contact the EPA no

later than September 2, 1997. If a hearing is held, it will take place on September 8, 1997, beginning at 10 a.m.

**ADDRESSES:** *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–90–23 (see docket section below), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

*Public Hearing.* If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Kim Teal, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5580.

*Docket.* Docket No. A–90–23, containing the supporting information for the original NESHAP and this action, are available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, first floor, 401 M Street SW, Washington, DC 20460, or by calling (202) 260–7548 or 260–7549. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** For general questions, contact Dr. Janet S. Meyer, Coatings and Consumer Products Group, at (919) 541–5254. For technical questions on appendix C and wastewater provisions, contact Elaine Manning, Waste and Chemical Processes Group, telephone number (919) 541–5499. The mailing address for the contacts is Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

**SUPPLEMENTARY INFORMATION:** Comments on the proposed changes to the NESHAP may also be submitted electronically by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments will also be accepted on diskette in WordPerfect 6.1 or ASCII file format. All comments in electronic form must be identified by the docket number A–90–23. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

## I. Regulated Entities and Background Information

### *A. Regulated Entities*

The regulated category and entities affected by this action include:

| Category | Examples of regulated entities |
|---|---|
| Industry | Synthetic organic chemical manufacturing industry (SOCMI) units, e.g., producers of benzene, toluene, or any other chemical listed in Table 1 of 40 CFR part 63, subpart F. |

This table is not intended to be exhaustive but, rather, provides a guide for readers regarding entities likely to be interested in the revisions to the regulation affected by this action. This action is expected to be of interest to owners and operators subject to this rule who plan to use biological treatment to comply with control requirements for wastewater streams. Entities potentially regulated by the HON are those which produce as primary intended products any of the chemicals listed in table 1 of 40 CFR part 63, subpart F and are located at facilities that are major sources as defined in section 112 of the Clean Air Act. To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.100. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

### *B. Background on the Rule*

On April 22, 1994 (59 FR 19402), and June 6, 1994 (59 FR 29196), the EPA published in the **Federal Register** the NESHAP for the SOCMI, and for several other processes subject to the equipment leaks portion of the rule. These regulations were promulgated as subparts F, G, H, and I in 40 CFR part 63, and are commonly referred to as the hazardous organic NESHAP, or the HON. Since the April 22, 1994 notice, there have been several amendments to clarify various aspects of the rule. Readers should see the following **Federal Register** documents for more information: September 20, 1994 (59 FR 48175); October 24, 1994 (59 FR 53359); October 28, 1994 (59 FR 54131); January 27, 1995 (60 FR 5321); April 10, 1995 (60 FR 18020); April 10, 1995 (60 FR 18026); December 12, 1995 (60 FR 63624); February 29, 1996 (61 FR 7716); June 20, 1996 (61 FR 31435); August 26, 1996 (61 FR 43698); December 5, 1996 (61 FR 64571); and January 17, 1997 (62 FR 2721).

In June 1994, the Chemical Manufacturers Association (CMA) and Dow Chemical Company (Dow) filed petitions for review of the promulgated rule in the U.S. Court of Appeals for the District of Columbia Circuit, *Chemical Manufacturers Association* v. *EPA*, 94–1463 and 94–1464 (D.C. Cir.) and *Dow Chemical Company* v. *EPA*, 94–1465 (D.C. Cir). The petitioners raised over 75 technical issues on the rule's structure and applicability. Issues were raised regarding details of the technical requirements, drafting clarity, and structural errors in the drafting of certain sections of the rule. On August 26, 1996, the EPA proposed clarifying and correcting amendments to subparts F, G, H, and I of part 63 to address the issues raised by CMA and Dow on the April 1994 rule. On December 5, 1996 and January 17, 1997, EPA took final action on the amendments proposed on August 26, 1996.

## II. Proposed Clarification of Definition of Enhanced Biological Treatment System or Enhanced Biological Treatment Process

The August 26, 1996 proposed changes to the wastewater treatment provisions included provisions that provided easier compliance demonstration options for well-mixed activated sludge systems that are used to control readily biodegraded compounds. In that proposed change to the April 1994 final rule, the compounds listed in table 9 of subpart G were divided into three lists; these lists were presented in table 36 of subpart G. In the proposal, a performance evaluation would not be required for an activated sludge system if it met the definition of ''enhanced biological treatment system or enhanced biological treatment process'' and if the unit was controlling wastewater streams that contained only list 1 compounds. The August 1996 proposed revisions to the rule also required a performance demonstration for activated sludge systems used to treat a combination of list 1 and list 2 and/or list 3 compounds.

The August 1996 proposal defined an enhanced biological treatment system as

> an aerated treatment unit(s) that contains biomass suspended in water followed by a clarifier that removes biomass from the treated water and recycles recovered biomass to the aeration unit. The mixed liquor volatile suspended solids (biomass) is greater than 1 kilogram per cubic meter throughout each aeration unit. The biomass is suspended and aerated in the water of the aeration unit(s) by either submerged air flow or mechanical agitation.

This definition of ''enhanced biological treatment system or enhanced biological treatment process'' was intended to

reflect the basis for the simplified compliance approach for some systems. The 3 lists of compounds in table 36 of subpart G were developed by modeling performance of an activated sludge system that was a thoroughly mixed biological treatment unit. (A thoroughly mixed or completely mixed system is a biological treatment unit where biomass and wastewater entering the tank are dispersed quickly throughout the tank such that the system achieves or approaches uniform characteristics throughout the tank (Docket number A–90–23, item VII-B–8).) After the August 1996 proposal, the EPA learned that some people were interpreting the proposed definition of ''enhanced biological treatment system or biological treatment process'' to apply more broadly than intended. In the January 17, 1997 final rule, the phrase ''homogeneously distributed'' was added to the second sentence of the definition to clarify the EPA's intent to define a uniformly well-mixed biological treatment unit. The EPA thought that this revision would better reflect the modeling and clarify the EPA's intent to limit the types of biological treatment units that could use the simplified compliance option to systems that were similar to the modeled case. The EPA also believed that this change did not alter the meaning of the term.

Since January 17, 1997, the EPA has learned that industry representatives were concerned that the revised definition could be read to require absolute uniformity in the biomass concentration. These industry representatives have pointed out that they believe that such a reading of the definition could preclude any system from using the simplified compliance approach and the performance evaluation exemption. It was not the EPA's intent that the phrase ''homogeneously distributed'' be interpreted in this way. Therefore, the EPA is proposing clarifying changes to the definition of ''enhanced biological treatment system or enhanced biological treatment process'' and proposing parallel conforming changes to appendix C to part 63.

Today's action would revise the definition of ''enhanced biological treatment system or enhanced biological treatment process'' to read:

Enhanced biological treatment system or enhanced biological treatment process means an aerated, thoroughly mixed treatment unit(s) that contains biomass suspended in water followed by a clarifier that removes biomass from the treated water and recycles recovered biomass to the aeration unit. The mixed liquor volatile suspended solids (biomass) is greater than 1 kilogram per cubic meter throughout each aeration unit. The biomass is suspended and aerated in the water of the aeration unit(s) by either submerged air flow or mechanical agitation. A thoroughly mixed treatment unit is a unit that is designed and operated to approach or achieve uniform biomass distribution and organic compound concentration throughout the aeration unit by quickly dispersing the recycled biomass and the wastewater entering the unit.

The proposed definition includes the following changes made to the January 17, 1997 definition. The term ''thoroughly mixed'' would be added to the first sentence and ''homogeneously distributed'' would be removed from the second sentence of the definition. A sentence would be added to the end of the definition to clarify the meaning of the phrase ''thoroughly mixed treatment unit'' in the first sentence.

The description of a ''thoroughly mixed treatment unit'' in the new sentence is intended to convey the concept of an activated sludge system that is designed and operated to approach or achieve the characteristics of a completely backmixed system. Because the EPA does not intend the definition to only allow systems with perfect uniformity in characteristics, a ''thoroughly mixed treatment unit'' would be described as a unit that is ''designed and operated to approach or achieve uniform biomass distribution and organic compound concentration.'' This description is intended to recognize that well-designed complete mix systems may still have small insignificant stagnant zones or other minor deviations from complete mixing. This was the intended meaning of the definition promulgated on January 17, 1997 as well as the intended meaning of the definition proposed on August 26, 1996.

An example of a system that would meet the enhanced biological treatment system definition would be a well-designed, well-operated, and well-maintained activated sludge system that has uniform characteristics in the aeration unit. The biological treatment unit of this enhanced biological treatment system would be thoroughly mixed throughout the unit and biomass and wastewater entering the unit would be quickly dispersed throughout the unit. The design of the unit would be such that uniform mixing and quick dispersion of the biomass and wastewater entering the unit would occur. The design and operation of the biological treatment unit would take into account mixing, quick dispersion of the biomass and wastewater entering the unit, the location of the wastewater inlet with regards to aerators and the wastewater outlet.

In smaller size units, uniform mixing and quick dispersion could be achieved with a round or square tank and only one influent. For larger scale systems, uniform mixing and quick dispersion could be achieved by having multiple influents of biomass and wastewater. In either case, the biological treatment unit would have uniform distribution of organic concentration and mixed liquor volatile suspended solids (MLVSS) throughout the vessel where the biological reactions occur.

A plug-flow system is an example of a biological treatment system that does not meet the enhanced biological treatment system definition. Plug-flow systems typically occur in long tanks with a high length-to-width ratio in which longitudinal dispersion is minimal or absent (Docket number A–90–23, item VII–B–8). Plug-flow systems are not considered acceptable units for the performance test exemption because they tend to have higher air emissions at the front of the system where the concentration is higher. The modeling used to develop the simplified compliance approach for systems meeting the definition for an ''enhanced biological treatment system or enhanced biological treatment process'' did not address plug-flow systems. The EPA did not evaluate the performance of plug-flow systems in the development of the 3 lists for the simplified compliance approach due to the complexity of plug-flow systems. The wide range in characteristics of plug-flow systems led EPA to conclude that these systems had to be modeled using site-specific characteristics. Consequently, these systems are required to demonstrate compliance through use of the procedures in appendix C. The exclusion of plug-flow biological treatment systems from the simplified compliance demonstration should not be interpreted as implying that a well designed and operated plug-flow biological treatment system would not achieve the required removal of a compound and thus not represent an acceptable means of compliance. If correctly evaluated through the applicable procedures in appendix C to part 63, they can be acceptable.

Examples of additional biological systems that would not meet the enhanced biological treatment system definition would be units that are not thoroughly mixed throughout the aeration unit and that have large concentration gradients between the inlet and the outlet of the aeration unit. Such biological units do not quickly disperse the biomass and wastewater

entering the unit throughout the unit and tend to concentrate the volatile organics in a zone with relatively high air stripping rates. Other examples of units that would not meet the definition include a unit where the influent is introduced close to an aerator increasing the opportunity for volatilization prior to biodegradation and a unit where the influent is introduced close to a discharge point such that channeling occurs.

The EPA realizes that many units have varying degrees of uniformity in biomass distribution and organic compound concentration throughout the biological unit. The EPA is developing additional information to assist in the determination of whether a biological treatment unit meets the enhanced biological treatment system definition. The additional information will be available at the time the final amendment is issued. The EPA plans to make this material available from the Air and Radiation Docket and Information Center and to place it on the EPA's Technology Transfer Network bulletin board as well as on the Internet.

## III. Revisions to Requirements for Determining Site-Specific Fraction Biodegraded

The EPA is also proposing to revise the requirements in subpart G for determining site-specific fraction biodegraded ($F_{bio}$). The rule currently only allows biological treatment processes that meet the definition of ''enhanced biological treatment process'' to use the batch test procedures in appendix C to part 63. In today's action, the EPA is proposing to remove that restriction in § 63.145(h)(2) and to allow use of the batch test procedure in appendix C for any type of biological treatment system. The EPA is also proposing to allow use of the batch test procedure to determine compound specific fraction biodegraded ($f_{bio}$) for compounds designated as list 3 compounds in table 36 of subpart G. Because this second change removes the distinction between list 2 and list 3 compounds, today's action also proposes to revise table 36 by combining the list 2 and list 3 compounds into a new list 2 in table 36. These changes are being proposed to § 63.145(h) to provide more flexibility and to simplify this section of the rule.

## IV. Revisions to Appendix C to Part 63

In today's action, the EPA is also proposing to revise appendix C to part 63 to reflect the proposed revision of the definition for ''enhanced biological treatment system or enhanced biological treatment process.'' There are three sets of proposed changes to appendix C associated with the proposed change to the definition. First, the terminology ''uniform well-mixed or completely mixed system'' would be replaced with ''thoroughly mixed treatment unit'' throughout appendix C. Second, the description of a uniform well-mixed or completely mixed system would be removed from section I of appendix C and a sentence describing a thoroughly mixed treatment unit would be added to section I of appendix C. Third, based on discussions with industry representatives, the EPA has concluded that the examples in the second sentence of the fourth paragraph in section I were not helpful and should be deleted. Therefore, the second sentence of the fourth paragraph of section I would be removed and the remaining text in the fourth paragraph merged with the preceding paragraph.

The EPA is also proposing to revise the instructions for Procedure 1 and Procedure 4 in appendix C to part 63 to allow an owner or operator to assume that the first order biodegradation rate constant is zero for any regulated compound(s) present in the wastewater. Appendix C currently allows the use of this assumption only if the compound(s) represent a small proportion of the mass of the regulated compounds in the wastewater. This change would allow an owner or operator to assume that the biological treatment system achieves no control of a particular compound. The EPA is proposing this change to make appendix C consistent with § 63.145(a)(8) of subpart G and to remove a restriction that might under some circumstances impose an unnecessary burden to determine rate constants which will have no effect on the compliance demonstration.

## V. Administrative Requirements

### *A. Paperwork Reduction Act*

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the rule under the Provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0282. An Information Collection Request (ICR) document was prepared by the EPA (ICR No. 1414.03) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW; Washington, DC 20460 or by calling (202) 260–2740.

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 the EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The changes included in these proposed revisions to the rule will have no impact on the information collection burden estimates previously made. The changes consist of revised definitions, alternative test procedures, and clarifications of requirements. The proposed changes are not additional requirements. Consequently, the ICR has not been revised for this rule.

### *B. Executive Order 12866 Review*

Under Executive Order 12866, the EPA must determine whether the proposed regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The HON rule promulgated on April 22, 1994 was considered ''significant'' under Executive Order 12866, and a regulatory impact analysis was prepared. The amendments proposed today would clarify the rule and would remove restrictions on use of an alternative test procedure. These amendments would not add any new control requirements. Therefore, this regulatory action is considered ''not significant.''

### *C. Regulatory Flexibility*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment requirements unless the agency certified that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions. This proposed rule would not have a significant impact on a

substantial number of small entities. See the April 22, 1994 **Federal Register** (59 FR 19449) for the basis for this determination. The proposed changes to the rule merely clarify existing requirements and therefore, do not create any additional burden for any of the regulated entities. Therefore, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities.

*D. Unfunded Mandates Reform Act*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), 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 the private sector, of $100 million or more. Under section 205, the EPA must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires 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 today's 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. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: August 15, 1997.

**Carol M. Browner,**

*Administrator.*

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for part 63 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. Section 63.111 is amended by revising the definition of ''enhanced biological treatment system or enhanced biological treatment process'' to read as follows:

**§ 63.111 Definitions.**

* * * * *

*Enhanced biological treatment system or enhanced biological treatment process* means an aerated, thoroughly mixed treatment unit(s) that contains biomass suspended in water followed by a clarifier that removes biomass from the treated water and recycles recovered biomass to the aeration unit. The mixed liquor volatile suspended solids (biomass) is greater than 1 kilogram per cubic meter throughout each aeration unit. The biomass is suspended and aerated in the water of the aeration unit(s) by either submerged air flow or mechanical agitation. A thoroughly mixed treatment unit is a unit that is designed and operated to approach or achieve uniform biomass distribution and organic compound concentration throughout the aeration unit by quickly dispersing the recycled biomass and the wastewater entering the unit.

* * * * *

3. Section 63.145 is amended by revising paragraph (h) the introductory text and paragraph (h)(2) to read as follows:

**§ 63.145 Process wastewater provisions—test methods and procedures to determine compliance.**

* * * * *

(h) *Site-specific fraction biodegraded ($F_{bio}$).* The compounds listed in table 9 of this subpart are divided into two sets for the purpose of determining whether $F_{bio}$ must be determined, and if $F_{bio}$ must be determined, which procedures may be used to determine compound-specific kinetic parameters. These sets are designated as lists 1 and 2 in table 36 of this subpart.

* * * * *

(2) *$F_{bio}$ determination.* If a biological treatment process does not meet the requirement specified in paragraph (h)(1)(i) of this section, the owner or operator shall determine $F_{bio}$ for the biological treatment process using the procedures in appendix C to part 63, and paragraph (h)(2)(ii) of this section. If a biological treatment process meets the requirements of paragraph (h)(1)(i) of this section but does not meet the requirement specified in paragraph (h)(1)(ii) of this section, the owner or operator shall determine $F_{bio}$ for the biological treatment process using the procedures in appendix C to part 63, and paragraph (h)(2)(i) of this section.

(i) *Enhanced biological treatment processes.* If the biological treatment process meets the definition of ''enhanced biological treatment process'' in § 63.111 of this subpart and the wastewater streams include one or more compounds on list 2 of table 36 of this subpart that do not meet the criteria in paragraph (h)(1)(ii) of this section, the owner or operator shall determine $f_{bio}$ for the list 2 compounds using any of the procedures specified in appendix C of 40 CFR part 63. (The symbol ''$f_{bio}$'' represents the site specific fraction of an individual Table 8 or Table 9 compound that is biodegraded.) The owner or operator shall calculate $f_{bio}$ for the list 1 compounds using the defaults for first order biodegradation rate constants ($K_1$) in table 37 of subpart G and follow the procedure explained in Form III of appendix C, 40 CFR part 63, or any of the procedures specified in appendix C, 40 CFR part 63.

(ii) *Biological treatment processes that are not enhanced biological treatment processes.* For biological treatment processes that do not meet the definition for ''enhanced biological treatment process'' in § 63.111 of this subpart, the owner or operator shall determine the $f_{bio}$ for the list 1 and 2 compounds using any of the procedures in appendix C to part 63, except procedure 3 (inlet and outlet concentration measurements).

* * * * *

4. Table 36 of Appendix to Subpart G is revised to read as follows:

* * * * *

TABLE 36. COMPOUND LISTS USED FOR COMPLIANCE DEMONSTRATIONS FOR ENHANCED BIOLOGICAL TREATMENT PROCESSES (SEE § 63.145(h))

| List 1 | List 2 |
|---|---|
| Acetonitrile | Acetaldehyde |
| Acetophenone | Acrolein |
| Acrylonitrile | Allyl Chloride |
| Biphenyl | Benzene |
| Chlorobenzene | Benzyl Chloride |
| Dichloroethyl Ether | Bromoform |
| Diethyl Sulfate | Bromomethane |

TABLE 36. COMPOUND LISTS USED FOR COMPLIANCE DEMONSTRATIONS FOR ENHANCED BIOLOGICAL TREATMENT PROCESSES (SEE § 63.145(h))—Continued

| List 1 | List 2 |
|---|---|
| Dimethyl Sulfate | Butadiene 1,3 |
| Dimethyl Hydrazine 1,1 | Carbon Disulfide |
| Dinitrophenol 2,4 | Carbon Tetrachloride |
| Dinitrotoluene 2,4 | Chloroethane (ethyl chloride) |
| Dioxane 1,4 | Chloroform |
| Ethylene Glycol Monobutyl Ether Acetate | Chloroprene |
| Ethylene Glycol Monomethyl Ether Acetate | Cumene (isopropylbenzene) |
| Ethylene Glycol Dimethyl Ether | Dibromoethane 1,2 |
| Hexachlorobenzene | Dichlorobenzene 1,4 |
| Isophorone | Dichloroethane 1,2 |
| Methanol | Dichloroethane 1,1 (ethylidene dichloride) |
| Methyl Methacrylate | Dichloroethene 1,1 (vinylidene chloride) |
| Nitrobenzene | Dichloropropane 1,2 |
| Toluidine | Dichloropropene 1,3 |
| Trichlorobenzene 1,2,4 | Dimethylaniline N,N |
| Trichlorophenol 2,4,6 | Epichlorohydrin |
| Triethylamine | Ethyl Acrylate |
| | Ethylbenzene |
| | Ethylene Oxide |
| | Ethylene Dibromide |
| | Hexachlorobutadiene |
| | Hexachloroethane |
| | Hexane-n |
| | Methyl Isobutyl Ketone |
| | Methyl Tertiary Butyl Ether |
| | Methyl Ethyl Ketone, (2-butanone) |
| | Methyl Chloride |
| | Methylene Chloride (dichloromethane) |
| | Naphathalene |
| | Nitropropane 2 |
| | Phosgene |
| | Propionaldehyde |
| | Propylene Oxide |
| | Styrene |
| | Tetrachloroethane 1,1,2,2 |
| | Toluene |
| | Trichloroethane 1,1,1 (methyl chloroform) |
| | Trichloroethane 1,1,2 |
| | Trichloroethylene |
| | Trimethylpentane 2,2,4 |
| | Vinyl Chloride |
| | Vinyl Acetate |
| | Xylene-m |
| | Xylene-o |
| | Xylene-p |

* * * * *

5. Section I of Appendix C to part 63 is revised to read as follows:

## Appendix C to Part 63—Determination of the Fraction Biodegraded ($F_{bio}$) in a Biological Treatment Unit

### *I. Purpose*

The purpose of this appendix is to define the procedures for an owner or operator to use to calculate the site specific fraction of organic compounds biodegraded ($F_{bio}$) in a biological treatment unit. If an acceptable level of organic compounds is destroyed rather than emitted to the air or remaining in the effluent, the biological treatment unit may be used to comply with the applicable treatment requirements without the unit being covered and vented through a closed vent system to an air pollution control device.

The determination of $F_{bio}$ shall be made on a system as it would exist under the rule. The owner or operator should anticipate changes that would occur to the wastewater flow and concentration of organics, to be treated by the biological treatment unit, as a result of enclosing the collection and treatment system as required by the rule.

The forms presented in this appendix are designed to be applied to thoroughly mixed treatment units. A thoroughly mixed treatment unit is a unit that is designed and operated to approach or achieve uniform biomass distribution and organic compound concentration throughout the aeration unit by quickly dispersing the recycled biomass and the wastewater entering the unit. Systems that are not thoroughly mixed treatment units should be subdivided into a series of zones that have uniform characteristics within each zone. The number of zones required to characterize a biological treatment system will depend on the design and operation of the treatment system. Each zone should then be modeled as a separate unit. The amount of air emissions and biodegradation from the modeling of these separate zones can then be added to reflect the entire system.

* * * * *

6. Section III of appendix C of part 63, the second paragraph after (4) is revised to read as follows:

* * * * *

**III. * * ***

(4) * * *

* * * * *

Select one or more appropriate procedures from the four listed above based on the availability of site specific data. If the facility does not have site-specific data on the removal efficiency of its biological treatment unit, then Procedure 1 or Procedure 4 may be used. Procedure 1 allows the use of a bench top bioreactor to determine the first-

order biodegradation rate constant. An owner or operator may elect to assume the first order biodegradation rate constant is zero for any regulated compound(s) present in the wastewater. Procedure 4 explains two types of batch tests which may be used to estimate the first order biodegradation rate constant. An owner or operator may elect to assume the first order biodegradation rate constant is zero for any regulated compound(s) present in the wastewater. Procedure 3 would be used if the facility has, or measures to determine, data on the inlet and outlet individual organic compound concentration for the biological treatment unit. Procedure 3 may only be used on a thoroughly mixed treatment unit. Procedure 2 is used if a facility has or obtains performance data on a biotreatment unit prior to and after addition of the microbial mass. An example where Procedure 2 could be used, is an activated sludge unit where measurements have been taken on inlet and exit concentration of organic compounds in the wastewater prior to seeding with the microbial mass and start-up of the unit. The flow chart in Figure 1 outlines the steps to use for each of the procedures.

* * * * *

## Appendix C to Part 63 [Amended]

7. In appendix C of part 63, section III, in the second sentence of C, the phrase ''uniform well-mixed or completely mixed system'' is revised to read ''thoroughly mixed treatment unit.''

[FR Doc. 97–22367 Filed 8–21–97; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 63

**[AD–FRL–58793]**

**RIN 2060–AC19**

## National Emission Standards for Hazardous Air Pollutants for Source Categories; Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule: Amendments.

**SUMMARY:** The EPA proposes to amend the National Emission Standards for Hazardous Air Pollutants for Source Categories; Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) by adding tetrahydrobenzaldehyde (THBA) and crotonaldehyde to, and removing acetaldol from, the list of chemical production processes. This action also proposes to establish a separate compliance date of 3 years from final action for subparts F and G of part 63 and 1 year from final action for subpart H of part 63 for THBA and crotonaldehyde production processes. The EPA is also proposing a change to clarify compliance demonstration requirements for flexible operation units.

This proposed action would implement section 112(d) of the Clean Air Act as amended in 1990 (the Act), which requires the Administrator to regulate emissions of hazardous air pollutants (HAP) listed in section 112(b) of the Act. The intended effect of this proposed rule is to protect the public by requiring new and existing major sources to control emissions of HAP to the level reflecting application of the maximum achievable control technology. This action also proposes to amend the initial list of source categories of HAP required by section 112 (c) of the Act by removing THBA production from the list of categories of major sources.

**DATES:** *Comments.* Comments must be received on or before September 22, 1997, unless a hearing is requested by September 22, 1997. If a hearing is requested, written comments must be received by October 6, 1997.

*Public Hearing.* Anyone requesting a public hearing must contact the EPA no later than September 2, 1997. If a hearing is held, it will take place on September 8, 1997, beginning at 10 a.m.

**ADDRESSES:** *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–30 (see docket section below), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

*Public Hearing.* If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Marguerite Thweatt, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone (919) 541–5607.

*Docket.* Docket No. A–95–30, containing the supporting information for the original NESHAP and this action, are available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, first floor, 401 M Street SW, Washington, DC 20460, or by calling (202) 260–7548 or 260–7549. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this action contact Mr. John Schaefer at (919) 541–0296, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

**SUPPLEMENTARY INFORMATION:**

### I. Regulated Entities and Background Information

*A. Regulated Entities*

The regulated category and entities affected by this action include:

| Category | Regulated entities |
|---|---|
| Industry | Facilities that produce tetrahydrobenzaldehyde; facilities that produce crotonaldehyde<br>Synthetic organic chemical manufacturing industry (SOCMI) units, e.g., producers of benzene, toluene, or any other chemical listed in Table 1 of 40 CFR part 63, subpart F. |

This table is not intended to be exhaustive but, rather, provides a guide for readers regarding entities likely to be interested in the revisions to the regulation affected by this action. Entities potentially regulated by the HON are those which produce as primary intended products any of the chemicals listed in table 1 of 40 CFR part 63, subpart F or facilities producing THBA or crotonaldehyde and that are located at facilities that are major sources as defined in section 112 of the Clean Air Act (CAA). To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.100. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

With today's action, EPA is proposing to make production of THBA and crotonaldehyde subject to subparts F, G, and H of 40 CFR part 63. Subparts F, G, and H of 40 CFR part 63 establish National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) (57 FR 62607). This rule is commonly referred to as the hazardous organic NESHAP or the HON. The HON rule applies to SOCMI facilities located at major sources and affects approximately 310 facilities nationwide. These SOCMI facilities include those that produce one or more of the synthetic organic

chemicals listed in Table 1 of subpart F and that either (1) use an organic HAP as a reactant or (2) produce an organic HAP in the process. Emission points within these facilities affected by the rule are process vents, storage vessels, transfer operations, equipment leaks, and wastewater collection systems. Processes producing THBA were not included on the list of SOCMI processes to be regulated under the HON. Crotonaldehyde production was removed from the list of SOCMI processes to be regulated by the HON when the rule was issued in April 1994. Crotonaldehyde production was deleted because available information indicated that this chemical was no longer produced in the United States. Because EPA has since learned that crotonaldehyde is still produced in the United States, in today's action EPA is proposing to add crotonaldehyde production to the HON.

*B. Electronic Submission of Comments*

Comments on the proposed changes to the NESHAP may also be submitted electronically by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments will also be accepted on diskette in WordPerfect 5.1 or ASCII file format. All comments in electronic form must be identified by the docket number A–90–19. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

## II. Summary of Proposed Changes to Rule

*A. Addition of THBA Production*

Tetrahydrobenzaldehyde production was included as a source of HAP emissions under the source category of butadiene dimers production on the initial list of source categories selected for regulation under section 112(c) of the Act published on July 16, 1992 (57 FR 31576) and was scheduled for control by November 1997 on the section 112(c) source category schedule (58 FR 63941). Although the initial source category list clearly identified THBA production as being included in the butadiene dimers production source category, the butadiene dimers name was a misnomer. Consequently, the butadiene dimers production source category was changed to THBA production by a source category list maintenance action finalized on June 4, 1996 (61 FR 28197). Today's action would add THBA production to the HON.

The chemical THBA is produced by reacting 1,3-butadiene and acrolein together. Both 1,3-butadiene and acrolein are HAPs and are emitted during the production process. At this time, only one facility in the nation manufactures THBA, and it is not expected that additional facilities will begin producing THBA. The THBA production unit is co-located with other SOCMI production units to which the HON is applicable. In addition, the emissions points and air pollution control measures applied are identical to those encountered in these co-located SOCMI units.

Tetrahydrobenzaldehyde is used in the manufacture of paint additives. The product is similar to other SOCMI products on the list of HON affected chemicals in that it is an intermediate organic chemical used in the manufacture of other organic chemicals. The production of THBA was not included in the HON initially, because EPA was unaware of THBA's similarities to other SOCMI chemicals. Had EPA been aware of these similarities THBA would have been included in the list of affected HON chemicals in the initial HON rulemaking and subject to the requirements in the HON.

The EPA considers THBA production to be a batch process since, the process operates over only a short operating cycle before experiencing significant fouling (plugging) in the reaction system, requiring the system to be shutdown and the equipment cleaned. Due to the frequent shutdown and equipment cleaning cycle, the process is classified as a batch process for purposes of subpart H.

The effect of today's proposed action is twofold. First, it potentially subjects facilities manufacturing THBA to the provisions of 40 CFR Part 63, subparts F, G, and H. Although an independent assessment of the impacts (environmental, cost, economic, or other) associated with this action has not been conducted, the EPA believes that the impact on the THBA production unit will be no more or less severe than those imposed on the other SOCMI production processes already affected. Second, it overrides the need to write a separate regulation for the THBA production source category. Consequently, the THBA production source category is being removed from the list of HAP-emitting source categories published pursuant to Section 112(c) of the Act because it is being subsumed under the HON rule. The EPA does not believe that the development of a separate rule for this source category is justified or would result in a different control level than that required under the HON. Today's proposed action is consistent with the source category schedule, which requires regulation of THBA production (originally listed as butadiene dimers production) by November 1997. Today's action is the first step in fulfilling that requirement.

With respect to the issue of whether the addition of the THBA production source category to the population of SOCMI sources regulated by the HON would alter the maximum achievable control technology (MACT) determinations made for the HON rule, it has been concluded that since the emission points and air pollution control measures at the only facility known to manufacture THBA are similar to those at other SOCMI sources, the HON MACT floor determination would be unaffected.

The EPA is proposing to establish compliance dates for THBA production units of 1 year from the date this action is final for subpart H of this part and 3 years from the date this action is final for subparts F and G of this part. The EPA is proposing a compliance date of three years from the date this action is final for compliance with subparts F and G of this part to allow time for retrofitting of controls and evaluation of control requirements in the one known facility. A compliance date of one year from the date this action is final is being proposed for compliance with subpart H of this part. One year is believed to provide sufficient time to establish the equipment leak monitoring program and recordkeeping system. These time periods are consistent with the compliance times provided for sources originally subject to the HON rule.

*B. Addition of Crotonaldehyde Production and Removal of Acetaldol Production*

Today's action proposes to add crotonaldehyde production to the chemical production processes subject to the HON and to establish a new compliance date for crotonaldehyde chemical manufacturing process units. In addition, today's action proposes to remove acetaldol production processes from the applicability of the HON by removing this chemical from table 1 of subpart F.

In the April 22, 1994 rule, EPA made several changes to the proposed lists of chemical products to correct errors and to remove chemicals no longer commercially produced in the United States. One of the chemical products removed from the list of SOCMI

chemicals in the April 1994 notice, based upon the belief that it was no longer commercially produced in the United States, was crotonaldehyde. Since April 1994, EPA has learned that this removal was an error because crotonaldehyde is produced by at least one facility in the United States. The EPA has also learned that acetaldol, which was retained on table 1 of subpart F in the April 1994 rule, is an unstable intermediate which is used to produce either crotonaldehyde or 1,3—butylene glycol, and is therefore not itself a product appropriate for inclusion on table 1 of subpart F. Based on the January 17, 1997 amendments to the HON (62 FR 2721), EPA believes that acetaldol production operations are more appropriately considered unit operations part of crotonaldehyde or 1,3—butylene glycol chemical manufacturing process units. Therefore, the EPA is proposing to revise table 1 of subpart F by removing acetaldol. Crotonaldehyde production would be added to subpart F as a regulated process. No action is needed for 1,3—butylene glycol because that chemical is already listed in table 1 of subpart F.

A new compliance date is being proposed for crotonaldehyde chemical production process units because of the confusion caused by listing a nonisolated intermediate chemical product instead of the correct final product. The EPA is proposing a new compliance date of 3 years from the date that this action becomes final for compliance with subparts F and G of this part to allow time for retrofitting of controls and evaluation of control requirements in the one known facility. A compliance date of 1 year from the date that this action is final is being proposed for compliance with subpart H of this part. One year is believed to provide sufficient time to establish the equipment leak monitoring program and recordkeeping system. These time periods are consistent with the compliance times provided for sources originally subject to the HON rule.

### *C. Clarification of Compliance Demonstration Requirements for Flexible Operation Units*

In today's action, EPA is proposing to add a new paragraph (b)(6) to § 63.103 of subpart F to clarify the compliance demonstration requirements for flexible operation units. This proposed amendment would revise the rule to clarify that performance tests and monitoring parameter ranges are to be based on operating conditions present during production of the primary product. The April 1994 rule was not clear on this point due to a drafting oversight. This change is being proposed because some owners and operators have expressed concerns that the rule could be interpreted as requiring installation of additional controls for periods when the flexible operation unit is producing a product other than the primary product. The EPA has also recently learned that there are questions whether the rule requires owners or operators to develop parameter monitoring ranges appropriate for each product produced by a flexible operation unit or to develop parameter monitoring ranges for operating conditions during production of the primary product of the flexible operation unit. The need for clarification of these aspects of compliance demonstration has become apparent as facilities are completing compliance planning and demonstration activities for the April 1997 compliance deadline. This proposed revision would make the rule consistent with the assumptions that EPA used in deriving the cost (including the recordkeeping and reporting burden) estimates used in support of the April 1994 rule. Based on conversations with several industry representatives, EPA believes that today's proposed action is generally consistent with industry's understanding of the rule. Today's proposed clarification is not expected to increase the cost or burden of demonstrating compliance with the HON.

## III. Administrative

### *A. Paperwork Reduction Act*

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the rule under the Provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0282. An Information Collection Request (ICR) document was prepared by the EPA (ICR No. 1414.02) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M St., SW., Washington DC 20460 or by calling (202) 260–2740.

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 the EPA's regulations are listed in 40 CFR part 9 and 48 CFR Ch. 15.

Today's action neither adds new respondents nor is it anticipated to increase the number of responses. The increase in the number of effected processing units is less than 2 percent. Since this action does not substantially change the information collection, the ICR has not been revised.

### *B. Executive Order 12866 Review*

Under Executive Order 12866, the EPA must determine whether the proposed regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This proposed amendment would apply the rule to one additional process unit at two facilities. These facilities are already well controlled. It is not certain what additional control would be required as a result of this action. Regardless of the final assessment of additional controls at these two facilities, the EPA believes that application of the HON to these facilities will have a negligible impact on the results of the RIA and the change will be within the uncertainty of the analysis. The proposed clarification of the compliance demonstration requirements for flexible operation units is believed to be consistent with industry understanding of the rule, and is believed to have a negligible impact on the results of the RIA. Again, the change is expected to be within the uncertainty of the analysis. For these reasons, the EPA believes that revision of the Regulatory Impact Analysis is not necessary. Pursuant to the terms of the Executive Order 12966, it has been determined that this rule is not a ''significant regulatory action'' because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

### *C. Regulatory Flexibility*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct

a regulatory flexibility analysis of any rule subject to notice and comment requirements unless the agency certified that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions. This proposed amendment to the rule would not have a significant impact on a substantial number of small entities. This rule would apply the requirements of the HON rule to an additional process unit at two facilities and only imposes negligible recordkeeping costs on those facilities. The additional recordkeeping costs are not expected to create a burden for either of the regulated entities. Furthermore, neither of these regulated entities is a small business. The amendment to § 63.103(b)(6) is a clarification of an existing requirement, and this clarification is not expected to increase control requirements or burden of the rule. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

*D. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), 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 the private sector, of $100 million or more. Under section 205, the EPA must select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires 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 action proposed today 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. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: August 15, 1997.

**Carol M. Browner,**

*Administrator.*

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart F—National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry

2. Section 63.100 is amended as follows:

a. By revising paragraphs (b)(1), (d) introductory text, (d)(3) introductory text, the first sentence of paragraph (g)(2)(iii), the first sentence of paragraph (h)(2)(iv), the first sentence of paragraph (i)(2)(iv), (k) introductory text, (l)(1)(ii), (l)(2)(ii);

b. By adding paragraphs (b)(1)(i), (b)(1)(ii), (d)(4), (g)(2)(iii)(A), (g)(2)(iii)(B), (h)(2)(iv)(A), (h)(2)(iv)(B), (i)(2)(iv)(A), (i)(2)(iv)(B), and (p).

The revisions and additions read as follows:

### § 63.100 Applicability and designation of source.

* * * * *

(b) * * *

(1) Manufacture as a primary product one or more of the chemicals listed in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(i) One or more of the chemicals listed in table 1 of this subpart; or

(ii) One or more of the chemicals listed in paragraphs (b)(1)(ii)(A) or (b)(1)(ii)(B) of this section:

(A) Tetrahydrobenzaldehyde (CAS Number 100–50–5); or

(B) Crotonaldehyde (CAS Number 123–73–9).

* * * * *

(d) The primary product of a chemical manufacturing process unit shall be determined according to the procedures specified in paragraphs (d)(1), (d)(2), (d)(3), and (d)(4) of this section.

* * * * *

(3) For chemical manufacturing process units that are designed and operated as flexible operation units producing one or more chemicals listed in table 1 of this subpart, the primary product shall be determined for existing sources based on the expected utilization for the five years following April 22, 1994 and for new sources based on the expected utilization for the first five years after initial start-up.

* * * * *

(4) Notwithstanding the provisions of paragraph (d)(3) of this section, for chemical manufacturing process units that are designed and operated as flexible operation units producing a chemical listed in paragraph (b)(1)(ii) of this section, the primary product shall be determined for existing sources based on the expected utilization for the five years following [Insert date 60 days after date of publication in the **Federal Register**] and for new sources based on the expected utilization for the first five years after initial start-up.

(i) The predominant use of the flexible operation unit shall be determined according to paragraphs (d)(3)(i)(A) and (d)(3)(i)(B) of this section. If the predominant use is to produce one of the chemicals listed in paragraph (b)(1)(ii) of this section, then the flexible operation unit shall be subject to the provisions of this subpart and subparts G and H of this part.

(ii) The determination of applicability of this subpart to chemical manufacturing process units that are designed and operated as flexible operation units shall be reported as part of an operating permit application or as otherwise specified by the permitting authority.

* * * * *

(g) * * *

(2) * * *

(iii) If the predominant use of a storage vessel varies from year to year, then the applicability of this subpart shall be determined according to the criteria in paragraphs (g)(2)(iii)(A) and (g)(2)(iii)(B) of this section, as applicable. * * *

(A) For chemical manufacturing process units that produce one or more of the chemicals listed in table 1 of this subpart and meet the criteria in paragraphs (b)(2) and (b)(3) of this section, the applicability shall be based on the utilization that occurred during the 12-month period preceding April 22, 1994.

(B) For chemical manufacturing process units that produce one or more of the chemicals listed in paragraph (b)(1)(ii) of this section and meet the criteria in paragraphs (b)(2) and (b)(3) of this section, the applicability shall be based on the utilization that occurred during the 12-month period preceding [Insert date 60 days after date of publication in the Federal Register].

* * * * *

(h) * * *

(2) * * *

(iv) If the predominant use of a loading arm or loading hose varies from

year to year, then the applicability of this subpart shall be determined according to the criteria in paragraphs (h)(2)(iv)(A) and (h)(2)(iv)(B) of this section, as applicable. * * *

(A) For chemical manufacturing process units that produce one or more of the chemicals listed in table 1 of this subpart and meet the criteria in paragraphs (b)(2) and (b)(3) of this section, the applicability shall be based on the utilization that occurred during the 12-month period preceding April 22, 1994.

(B) For chemical manufacturing process units that produce one or more of the chemicals listed in paragraph (b)(1)(ii) of this section and meet the criteria in paragraphs (b)(2) and (b)(3) of this section, the applicability shall be based on the utilization that occurred during the year preceding [*Insert date 60 days after date of Publication in the Federal Register*].

* * * * *

(i) * * *

(2) * * *

(iv) If the predominant use of a distillation unit varies from year to year, then the applicability of this subpart shall be determined according to the criteria in paragraphs (i)(2)(iv)(A) and (i)(2)(iv)(B) of this section, as applicable. * * *

(A) For chemical manufacturing process units that produce one or more of the chemicals listed in table 1 of this subpart and meet the criteria in paragraphs (b)(2) and (b)(3) of this section, the applicability shall be based on the utilization that occurred during the year preceding April 22, 1994.

(B) For chemical manufacturing process units that produce one or more of the chemicals listed in paragraph (b)(1)(ii) of this section and meet the criteria in paragraphs (b)(2) and (b)(3) of this section, the applicability shall be based on the utilization that occurred during the year preceding [*Insert date 60 days after date of publication in the Federal Register*].

* * * * *

(k) Except as provided in paragraphs (l), (m), and (p) of this section, sources subject to subparts F, G, or H of this part are required to achieve compliance on or before the dates specified in paragraphs (k)(1) through (k)(8) of this section.

* * * * *

(l)(1) * * *

(ii)(A) Such construction commenced after December 31, 1992 for chemical manufacturing process units that produce as a primary product one or more of the chemicals listed in table 1 of this subpart;

(B) Such construction commenced after [*Insert date of publication in the Federal Register*] for chemical manufacturing process units that produce as a primary product one or more of the chemicals listed in paragraph (b)(1)(ii) of this section; and

* * * * *

(2) * * *

(ii)(A) Such reconstruction commenced after December 31, 1992 for chemical manufacturing process units that produce as a primary product one or more of the chemicals listed in table 1 of this subpart; and

(B) Such construction commenced after [*Insert date of publication in the Federal Register*] for chemical manufacturing process units that produce as a primary product one or more of the chemicals listed in paragraph (b)(1)(ii) of this section.

* * * * *

(p) *Compliance dates for chemical manufacturing process units that produce crotonaldehyde or tetrahydrobenzaldehyde.* Notwithstanding the provisions of paragraph (k) of this section, chemical manufacturing process units that meet the criteria in paragraphs (b)(1)(ii), (b)(2), and (b)(3) of this section shall be in compliance with this subpart and subparts G and H of this part by the dates specified in paragraphs (p)(1) and (p)(2) of this section, as applicable.

(1) If the source consists only of chemical manufacturing process units that produce as a primary product one or more of the chemicals listed in paragraph (b)(1)(ii) of this section, new sources shall comply by the date specified in paragraph (p)(1)(i) of this section and existing sources shall comply by the dates specified in paragraphs (p)(1)(ii) and (p)(1)(iii) of this section.

(i) Upon initial start-up or [*Insert date 60 days after date of publication in the Federal Register*], whichever is later.

(ii) This subpart and subpart G of this part by [*Insert date 38 months from the date of publication in the Federal Register*], unless an extension has been granted by the Administrator as provided in § 63.151 (a)(6) or granted by the permitting authority as provided in § 63.6 (i) of subpart A of this part. When April 22, 1994 is referred to in this subpart and subpart G of this part, [*Insert date 60 days after date of publication in the Federal Register*] shall be used as the applicable date for that provision. When December 31, 1992 is referred to in this subpart and subpart G of this part, [*Insert date of publication in the Federal Register*] shall be used as the applicable date for that provision.

(iii) Subpart H of this part by [*Insert date 14 months from the date of publication in the Federal Register*], unless an extension has been granted by the Administrator as provided in § 63.151 (a)(6) or granted by the permitting authority as provided in § 63.6 (i) of subpart A of this part. When April 22, 1994 is referred to in subpart H of this part, [*Insert date 60 days after date of publication in the Federal Register*] shall be used as the applicable date for that provision. When December 31, 1992 is referred to in subpart H of this part, [*Insert date of publication in the Federal Register*] shall be used as the applicable date for that provision.

(2) If the source consists of a combination of chemical manufacturing process units that produce as a primary product one or more of the chemicals listed in paragraph (b)(1)(i) and (b)(1)(ii) of this section, new chemical manufacturing process units that meet the criteria in paragraph (b)(1)(ii) of this section shall comply by the date specified in paragraph (p)(1)(i) of this section and existing chemical manufacturing process units producing crotonaldehyde and/or tetrahydrobenzaldehyde shall comply by the dates specified in paragraphs (p)(1)(ii) and (p)(1)(iii) of this section.

3. Section 63.103 is amended by adding paragraph (b)(6) to read as follows:

**§ 63.103 General compliance, reporting, and recordkeeping provisions.**

(b) * * *

(6) The owner or operator of a flexible operation unit shall conduct all required compliance demonstrations during production of the primary product. The owner or operator is not required to conduct compliance demonstrations for operating conditions during production of a product other than the primary product. Except as otherwise provided in this subpart or in subpart G or subpart H of this part, as applicable, the owner or operator shall operate each control device, recovery device, and/or recapture device that is required or used for compliance, and associated monitoring systems, without regard for whether the product that is being produced is the primary product or a different product. Except as otherwise provided in this subpart, subpart G and/or subpart H of this part, as applicable, operation of a control device, recapture device and/or recovery device required or used for compliance such that the daily average of monitored parameter values is outside the parameter range established pursuant to § 63.152(b)(2),

or such that the monitoring data show operation inconsistent with the monitoring plan established pursuant to § 63.120(d)(2) or § 63.181(g)(1)(iv), shall constitute a violation of the required operating conditions.

* * * * *

## Subpart F—[Amended]

4. Table 1 of subpart F is amended by removing the entry for acetaldol and its associated CAS number and group number.

[FR Doc. 97–22366 Filed 8–21–97; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

**[FRL–5876–4]**

## National Oil and Hazardous Substances Pollution Contingency Plan, National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent for partial deletion of the Saegertown Industrial Area Site from the National Priorities List (NPL).

**SUMMARY:** The Environmental Protection Agency, Region III (EPA) announces its intent to delete certain releases on the Saegertown Industrial Area Site (Site) from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL is published at 40 CFR part 300, appendix B. Part 300 is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which the EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). EPA has determined that the Site as described on the NPL no longer necessitates remedial measures for the properties affected by those releases. This proposal for partial deletion includes releases on the property formerly owned by the General American Transportation Corporation (GATX) and Spectrum Control, Inc. (SCI) and property currently owned by the Saegertown Manufacturing Corporation (SMC).

EPA bases its proposal to delete the releases from the former GATX and SCI properties, and the SMC property (Deleted Properties) from the Site on the determination by EPA and the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP), that all appropriate actions under CERCLA have been implemented to protect human health, welfare and the environment, as defined by CERCLA, and, therefore, no further remedial measures pursuant to CERCLA are deemed necessary for the Deleted Properties.

This partial deletion pertains only to releases on the former GATX and SCI properties and the SMC property at the Site, and does not include the Lord Corporation property (Operable Unit—1) at the Site. Operable Unit—1 (OU–1) will remain on the NPL, and response activities will continue for this Operable Unit.

**DATES:** Comments concerning this Site may be submitted on or before September 22, 1997.

**ADDRESSES:** Comments may be submitted to Steven J. Donohue, Remedial Project Manager, 3HW22, U.S. EPA, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, (215) 566–3215, Fax (215) 566–3001, e-mail DONOHUE.STEVEN@EPAMAIL.EPA.GOV.

Comprehensive information on this Site is available for viewing in the Site information repositories at the following locations: U.S. EPA, Region III, Hazardous Waste Technical Information Center, 841 Chestnut Building, Philadelphia, PA, 19107, (215) 566–5364; and the Saegertown Area Library, 320 Broad Street, Saegertown, PA 16433, (814) 763–5203.

**FOR FURTHER INFORMATION CONTACT:** Steven J. Donohue (3HW22), EPA Region 3, 841 Chestnut Building, Philadelphia, PA, 19107, (215) 566–3215, Fax (215) 566–3001, e-mail DONOHUE.STEVEN@EPAMAIL.EPA.GOV.

**SUPPLEMENTARY INFORMATION:**

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

### I. Introduction

The Environmental Protection Agency, Region III (EPA) announces its intent to delete releases on certain portions of the Saegertown Industrial Area Site (Site) located in Saegertown, Crawford County, Pennsylvania from the National Priorities List (NPL) published at 40 CFR part 300. These releases no longer pose a threat to human health or the environment and therefore remedial measures according to CERCLA are no longer necessary on the Deleted Properties. EPA requests comments on this partial deletion.

The Deleted Properties at the Saegertown Industrial Area Site are those properties, as originally listed on the NPL in February 1990, located to the north of Pennsylvania Route 198. The Deleted Properties are bounded by Route 198 to the south, generally bounded by an unnamed intermittent tributary of Woodcock Creek to the east and the northern property boundary of SMC to the north, and bounded by the former Conrail railroad right of way to the west. A figure and the exact coordinates that define the Deleted Properties at the Site are contained in the NPL deletion docket.

Section II of this document explains the criteria for partially deleting portions of a site from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the Saegertown Industrial Area Site and explains how partial deletion criteria are met for this Site.

### II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from, or recategorized on, the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-Financed response under CERCLA has been implemented, and no further action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Site releases may not be deleted from the NPL until the state in which the site is located has concurred with the proposed deletion. EPA is required to provide the state with 30 working days for review of the deletion notice prior to its publication in the **Federal Register**.

It states in the NCP (40 CFR 300.425(e)(3)) that all sites deleted from the NPL are eligible for further Fund-financed remedial action should future conditions warrant such action. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

## III. Deletion Procedures

Sections 300.425(e) (4) and (5) of the NCP set forth requirements for deletions of site releases to assure public involvement in the decision. EPA announced a policy change which permitted the partial deletions of those releases from the NPL in a document published on Wednesday, November 1, 1995 in the **Federal Register** (60 FR 55466). Accordingly, during the proposal to delete a release from the NPL, EPA is required to conduct the following activities:

(i) Publish a notice of intent for partial deletion in the **Federal Register** and solicit comment through a public comment period of a minimum of 30 calendar days;

(ii) Publish a notice of availability of the notice of intent for partial deletion in a major local newspaper of general circulation at or near the release that is proposed for deletion;

(iii) Place copies of information supporting the proposed partial deletion in the information repository at or near the site proposed for deletion; and,

(iv) Respond to each significant comment and any significant new data submitted during the comment period in a Responsiveness Summary.

If EPA determines that the deletion is appropriate after considering comments received during the public comment period and receiving the states's concurrence, EPA then publishes a notice of partial deletion in the **Federal Register** and places the final partial deletion package, including the Responsiveness Summary, in the site repositories.

Partial deletion of a site release from the NPL does not itself create, alter, or revoke any individual's rights or obligations. As stated in section II of this document, § 300.425(e)(3) of the NCP provides that the deletion of a site release from the NPL does not preclude eligibility for future response actions.

## IV. Basis for Intended Site Deletion

The following summary provides EPA's rationale for the proposed partial deletion of the Saegertown Industrial Area Site releases from the NPL.

The Saegertown Industrial Area Site consists of an approximately 100 acres area located in an industrial park in the Borough of Saegertown, Crawford County, Pennsylvania. Saegertown is located approximately 25 miles south of the City of Erie, Pennsylvania, and 5 miles north of the City of Meadville, Pennsylvania.

In July 1984, EPA began to investigate the Saegertown Industrial Area Site. Sampling confirmed the presence of trichloroethylene (TCE) and trichloroethane (TCA) in ground water on the Site. Soil and sludge samples from a pond on the Site revealed the presence of TCE, tetrachloroethylene (PCE), and polyaromatic hydrocarbons (PAHs). In late 1989, four companies signed an Administrative Order on Consent with EPA to conduct a Remedial Investigation/Feasibility Study (RI/FS) for the Site. On February 21, 1990, the Site was listed on the NPL list of Superfund Sites.

The Site was defined on the NPL as consisting of four properties in the industrial park: the Lord property, the former GATX property, and the SMC and SCI properties. The RI/FS for the Site examined each of these four areas separately. Based primarily on the information collected during the RI/FS, EPA issued a Record of Decision (ROD) for the Saegertown Industrial Area Site on January 29, 1993, which called for remedial action on two areas of the industrial park: the Lord property and the property formerly owned by the GATX.

On the Lord property, the RI/FS estimated that 7,500 pounds of chlorinated ethenes had leaked from a sump area into the ground water. As a result, the RI/FS estimated that 9.3 million gallons of ground water were estimated to be contaminated with PCE, 1,2 dichloroethene, vinyl chloride and TCE. In the January 1993 ROD for the Site, EPA selected a remedy for the Lord property consisting of the following components: delineation of the ground water plume; ground water extraction and treatment through air stripping or UV/oxidation; air sparging injection wells; vapor extraction and treatment through carbon adsorption; and long-term ground water monitoring. Subsequent to the ROD, EPA defined the Lord property remedy as Operable Unit 1 (OU–1) at the Site.

On the property formerly owned by GATX, the RI/FS estimated that 9,000 cubic yards of sludge and soil were contaminated with volatile organic compounds (VOCs) and PAHs in the lagoon, sludge bed and pond area. The remedy stated in the ROD for the former GATX property consisted of the following components: excavation of contaminated sludge and soil; onsite incineration with air pollution controls; restoration or replacement of the pond and wetland; and long-term ground water monitoring. Subsequent to the issuance of the ROD, EPA defined the former GATX property remedy as Operable Unit 2 (OU–2) at the Site.

The RI/FS indicated that the releases from the SMC and the SCI properties posed no significant threat to public health or the environment. The ROD, therefore, selected no action for the SMC and SCI properties at the Site. On September 17, 1993 SCI sold it's property at the Site to SMC.

EPA signed separate Consent Orders with Lord Corporation in September 1993, and with GATX Corporation in August 1994, for the cleanup of their respective current and former properties at the Site.

In 1991, Lord excavated contaminated soil on its property. The area was backfilled and the soil was taken for offsite incineration. Pre-design studies and studies of the extent of the remaining contamination at the Lord property began in 1994. Additional monitoring wells were installed in the overburden above the bedrock and in the bedrock to delineate the extent of ground water contamination and investigate the geology at the Site. In 1996, Lord discovered additional soil contamination in the ground under the western tank farm (WTF) on its property. Lord excavated 770 cubic yards of soil from the area. This soil is currently being biologically treated on the Lord property. Lord installed a bioventing system beneath the WTF to treat unexcavated soil around the tank foundations. During the spring and summer of 1997, Lord has been delineating the extent of ground water contamination on the west side of French Creek. This contamination has impacted one private well on the west side of the Creek. Lord has installed a treatment system on one impacted private well to remove contaminants of concern at the Site. Lord is continuing to perform additional hydrogeologic studies on the west side of French Creek.

Because the selected remedy for the Lord Corporation OU–1 at the Site has not yet been fully implemented and completed, this portion of the Site is not yet protective of human health and the environment and is not being proposed for deletion.

In March of 1995 and 1996, EPA modified the former GATX property remedy to allow off-site thermal treatment of contaminated soils and sludge and resource recovery. Off-site disposal of the contaminated sludge and soil began in the summer of 1995 and was completed in the fall of 1996. Over 32,000 tons of soil and sludge were excavated and removed from the former GATX property for off-site thermal treatment and resource recovery. Analysis of samples collected from the pond, sludge bed and lagoon areas on the former GATX property confirmed that the performance standard specified by the ROD, which defines the soil

cleanup goal, was achieved in all the excavation areas. The excavated areas on the former GATX property were then backfilled with clean soil, graded back to pre-existing contours and seeded. EPA inspected the former GATX property on October 10, 1996 and approved the demobilization of the remedial action contractor from the Site. EPA reinspected the former GATX property on June 4, 1997 and confirmed that vegetation had been fully re-established in the disturbed areas.

The ROD did not call for remedial action on the ground water beneath the former GATX property. Analytical results of ground water samples taken before the remedial action indicated that contaminants of concern were either not detected or were detected at concentrations below their Safe Drinking Water Act Maximum Contaminant Level (MCL) concentrations. Analysis of ground water samples from monitoring wells on the former GATX property has been performed quarterly through the remedial action and following completion of the remedial action. The concentrations of selected VOCs peaked during February of 1996 with some detections slightly in excess of allowable MCLs. In samples taken during quarterly monitoring in November 1996, February 1997 and May 1997 no VOCs have exceeded their respective allowable MCL concentrations. Monitoring is continuing and VOCs concentrations appear to be declining. Most VOCs concentrations are now below the detection limits of the analytical equipment.

GATX has implemented all appropriate response actions required under CERCLA on its former property at the Site. With the exception of continuing monitoring of the ground water, no further action is required at the former GATX property. In July 1997, EPA approved the remedial action certification report documenting the completion of the cleanup of the former GATX property in accordance with the ROD. The remedy selected and implemented at the former GATX property, OU–2 of the Site, remains protective of human health and the environment. The former GATX property is available for unrestricted use and unlimited access. Due to the continued ground water monitoring on the former GATX property, EPA will include this portion of the Site in the next Five-Year Review of the Site.

In public meetings in Saegertown the community has requested that EPA cleanup and delete portions of the Site as soon as possible to allow development of the industrial park. EPA is proposing to delete all appropriate areas of the Site in order to foster the re-use of Deleted Properties at the Site.

EPA believes that releases from the former GATX property, as well as the former SCI property and the SMC property (where no action was selected by the ROD), may be deleted from the Site as defined on the National Priority List and that no further remedial measures are necessary for the Deleted Properties of the Site.

Dated: August 8, 1997.

**Thomas Voltaggio,**

*Acting Regional Administrator, USEPA Region 3.*

[FR Doc. 97–22065 Filed 8–21–97; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 745

**[OPPTS–62128B; FRL–5740–7]**

**RIN 2070–AC64**

## Lead; Requirements for Lead-Based Paint Activities in Public Buildings, Commercial Buildings, and Steel Structures

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Announcement of meeting and request for comments.

**SUMMARY:** EPA is announcing a public meeting on September 3, 1997, in Washington, DC to take public comments and suggestions from a cross-section of stakeholders on the development of training and certification requirements and work practice standards for individuals and firms conducting lead-based paint activities in public buildings (except child-occupied facilities), commercial buildings, and steel structures under section 402 of the Toxic Substances Control Act (TSCA).

**DATES:** The meeting will take place on Wednesday, September, 3, 1997, beginning promptly at 9:30 and continuing until 5:00 p.m.

Written comments should be submitted no later than October 3, 1997.

**ADDRESSES:** The meeting will take place at the Marriott, 1221 22nd St. and M St., NW., Washington, DC.

Written comments may be submitted in triplicate to: Environmental Protection Agency, Office of Pollution Prevention and Toxics, OPPT Docket Clerk (7407), 401 M St., SW., Washington, DC 20460, and reference the docket control number [OPPTS–62128B]. Comments and data may also be submitted electronically by following the instructions under Unit V. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

**FOR FURTHER INFORMATION CONTACT:** For more specific or technical information contact: Ellie Clark, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: (202) 260–3402, fax: (202) 260–0770, e-mail: clark.ellie@epamail.epa.gov.

For general information or to obtain copies of this document contact: National Lead Information Clearinghouse (NLIC), 1025 Connecticut Ave., NW., Suite 1200, Washington, DC 20036–5405 or toll free at 11–800–LEAD–FYI (1–800–532–3394), fax: (202) 659–1192, e-mail: leadctr@nsc.org, Internet site: http://www.nsc.org/ehc/lead.html.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On October 28, 1992, the Residential Lead-Based Paint Hazard Reduction Act of 1992, Title X of the Housing and Community Development Act of 1992, became law. Title X amended TSCA by adding a new Title IV, the purpose of which is to reduce the hazards from lead in paint and coatings used in housing, public and commercial buildings, and steel structures. TSCA section 402, Lead-Based Paint Training and Certification, directs EPA to promulgate a final regulation to govern the training and certification of individuals engaged in lead-based paint activities, accreditation of training programs, and standards for conducting such activities. TSCA section 404, Authorized State Programs, provides that any State may seek to administer and enforce the requirements established under TSCA sections 402 and 406. On September 2, 1994, EPA published a proposed rule to address TSCA sections 402(a) and 404(d) (59 FR 45672)(''1994 proposal'')(FRL–4633–9). The 1994 proposal dealt with lead-based paint activities in target housing, public buildings constructed before 1978, commercial buildings, and bridges, and other structures and superstructures (''steel structures''). Following publication of the 1994 proposal, EPA met at different times with representatives from various State environmental and public health agencies and held a public hearing to receive comment on the proposal. EPA

received 323 written public comments on the 1994 proposal.

EPA published a final rule on requirements for lead-based paint activities in target housing and child-occupied facilities on August 29, 1996 (61 FR 45778)(''1996 rule'')(FRL–5389–9). Based on public comments, EPA had made several changes to the rule. One principal change in the 1996 rule was EPA's decision to delay promulgation of training and certification requirements and work practice standards for individuals and firms conducting lead-based paint activities in public buildings (except child-occupied facilities), commercial buildings, and steel structures. This decision was based primarily on the need to clarify the ''deleading'' definition contained in the 1994 proposal, and EPA's desire to avoid any potential conflict and overlap with the training requirements contained in OSHA's interim final lead standard (29 CFR 1926.62). EPA wishes to gain additional information from interested parties before proceeding with the rulemaking.

## II. Information for Participants

Any and all stakeholders (e.g., individuals, or representatives of organizations, governments, or academia) are invited to attend as members of the audience, and/or to submit written comments to the OPPT Docket Clerk under ''ADDRESSES'' at the beginning of this document. There also will be an opportunity for individuals to make brief oral presentations; however, the number of presenters, as well as time allotted, may be limited.

EPA is interested in focusing the public meeting on the issues presented in Unit IV. of this document. Speakers may be asked clarifying questions regarding their presentations by EPA representatives. EPA encourages speakers to supplement their oral presentations with written comment, as time constraints may not allow speakers to address all issues of interest. Persons wishing to sign-up for a presentation at the public meeting must pre-register by calling Alana Knaster at 818–591–9526. Speakers will be notified of their time slots once the final format is determined. The meeting is open to the public as space permits, and a summary of the proceedings will be prepared and entered into the docket. EPA also encourages those unable to attend the public meeting to submit written comments to the docket.

## III. Impact of Public Meeting on Future Rulemaking

As a result of the comments obtained from the public meeting and other efforts to obtain a better understanding of the conduct of lead-based paint activities in buildings and structures, EPA believes that the resulting requirements could be significantly different from those originally proposed in 1994. Therefore, EPA has decided that prior to promulgating final regulations, it will re-propose for public comment regulations for training and certification requirements and work practice standards for individuals and firms conducting lead-based paint activities in public buildings (except child-occupied facilities), commercial buildings, and steel structures. The development of the proposed regulations will be based in part on comments and information obtained as a result of this announcement. The public will also have an opportunity to comment on the proposed regulations which will be developed after the public meeting.

## IV. Issues for Public Meeting

TSCA section 402(a) requires EPA to promulgate regulations governing lead-based paint activities. TSCA section 402(b)(2) states that ''lead-based paint activities'' means, ''in the case of any public building constructed before 1978, commercial building, bridge or other structure or superstructure, identification of lead-based paint and materials containing lead-based paint, deleading, removal of lead from bridges, and demolition.'' In order to develop regulations consistent with TSCA section 402(b)(2), EPA needed to further define the types of buildings and structures subject to the rules as well as to clarify the specific activities defined as constituting lead-based paint activities in these structures.

EPA's approach to these issues in the 1994 proposal generated many comments. After further review of those public comments, EPA concluded that it needs to develop a better understanding of the sectors to be addressed before proceeding with further work on the regulations. Additionally, several years have passed since the 1994 proposal was published, and EPA recognizes that persons who commented on the original proposal may have additional information to add. EPA will consider any additional comments on the 1994 proposal the public wishes to make. However, during the public meeting, EPA is specifically interested in getting additional public comment on the following subjects: Coverage of lead-based paint activities, in particular clarification of the term ''deleading''; the interface between OSHA's lead standards and EPA's TSCA section 402 regulations; distinguishing among various building and structure types; and sources of information for EPA's regulations. EPA expects that the majority of the time will be spent addressing topics under the first issue; however, EPA discusses each issue in detail in this unit and requests comments and additional information on specific items.

### *A. Issue 1—Coverage of lead-based paint activities, in particular clarification of the term ''deleading''*

TSCA section 402(b)(2) includes four separate activities in its definition of lead-based paint activities for buildings and structures. One of these activities is deleading. In the 1994 proposal, EPA used the TSCA section 402(b)(2) terminology when it defined ''deleading'' as ''activities conducted by a person who offers to eliminate lead-based paint or lead-based paint hazards or to plan such activities.'' Additionally, EPA indicated that it was considering prohibiting the use of certain practices commonly used when conducting deleading activities in buildings and structures, because of the potential risk of lead contamination to workers and/or the environment posed by those practices. Public comments on the 1994 proposal raised a number of concerns with regard to deleading as well as identification of lead-based paint activities. Several key concerns are discussed in this unit.

1. *Intentional lead removal vs. maintenance activities.* Many commenters stated that EPA should exempt from the deleading definition activities which are not intended to address lead-based paint but are maintenance activities that involve some incidental disturbance of lead-coated surfaces. However, other commenters felt that although maintenance activities such as overcoating of steel structures may not be intended specifically to eliminate lead-based paint, overcoating should be covered under deleading, because it involves blast cleaning and other activities which generate lead-containing dust, paint chips, and other debris which could be hazardous and should be controlled.

The statutory definition of deleading is ''activities conducted by a person who offers to eliminate lead-based paint or lead-based paint hazards or to plan such activities.'' 42 U.S.C. 2682(b). This definition could reasonably be interpreted to encompass only activities

(including planning) that are intended, alone or in conjunction with other activities, to eliminate lead-based paint or lead-based paint hazards. According to this interpretation, if an activity is not intended to eliminate lead-based paint or a lead-based paint hazard, it would not be considered deleading.

If an intent test were to be applied strictly, generally even a large project which might involve large quantities of lead and/or significant lead exposure, but is not intended at least in part to eliminate lead-based paint or a lead-based paint hazard, would not constitute deleading. However, under section 402(b)(2) the phrase ''lead-based paint activities'' specifically includes, in addition to deleading, removal of lead from bridges and demolition. Therefore, demolition and removal of lead-based paint prior to overcoating a bridge would be covered, regardless of any intent to eliminate lead-based paint or its hazards.

The approach would appear to present several difficulties, including the following strict intent: First, a strict intent standard would be difficult to define and could be subject to loopholes. A second and related problem would be that projects that differ, even slightly, in intent but present the same or similar risks of lead exposure could be treated differently, which would be contrary to the purposes of the statute.

Assuming an intent standard is applied, EPA is considering two alternatives for developing an enforceable regulatory definition of deleading that is consistent with the language and purposes of the statute. One approach would be to interpret the definition to include only activities (including planning) that are specifically intended, alone or in conjunction with other activities, to eliminate lead-based paint or lead-based paint hazards. In order for such a definition to be enforceable, EPA believes it probably would be necessary to set forth objective criteria for determining whether the requisite intent exists. Such criteria might include contract documents or work orders that specifically call for the elimination of lead-based paint or its hazards, or other indicia of intent such as whether the activities will or are designed to result in the elimination of lead-based paint or its hazards. Activities which do not involve any intent to eliminate lead-based paint or its hazards would fall outside the scope of deleading.

An alternative approach to the regulatory definition of deleading would be to construe the ''offers to'' terminology of TSCA section 402(b), such that all activities that would have the effect of eliminating lead-based paint or its hazards would constitute deleading. The basis of this approach would be as follows: If the elimination of lead-based paint or its hazards is an integral part of a project (for instance, removal of old paint prior to repainting), an offer to eliminate lead-based paint or its hazards would be considered part of the offer to perform the project, even where the project also may involve other purposes such as maintenance. Activities that would not have the effect of eliminating lead-based paint or its hazards would not constitute deleading.

The different approaches to defining deleading may have different implications for addressing the issue, raised in comments on the 1994 proposal, of excluding routine maintenance activities from the definition. A strict intent standard, under which deleading would include only those projects which are specifically and expressly intended to eliminate lead-based paint or its hazards, would by its terms exclude activities undertaken for other purposes such as routine maintenance even where they might have effects that would constitute elimination of lead-based paint or its hazards. Under this approach, it would not be necessary to expressly exclude such activities. If, on the other hand, either of the alternative approaches discussed above were adopted, other activities potentially could be expressly excluded on the basis of the statutory definition of ''elimination'' of lead-based paint or its hazards—the deleading definition could exclude projects or activities that would not have that effect. For these purposes EPA could refer to the definition of abatement provided at TSCA section 401(1), which includes several specific examples of lead elimination. Under this approach, activities which might disturb lead or otherwise create the possibility of lead exposure would be considered deleading only if they would result in lead elimination. An additional measure, which could be applied alone or in conjunction with one of the foregoing, would be to adopt a *de minimis* exemption from the deleading definition. The *de minimis* issue is discussed in Unit IV.A.2. of this document.

EPA requests comment on these issues. In particular, EPA seeks comment on whether the statutory deleading definition at TSCA section 402(b) does embody an intent standard or an effect standard, and if so on how such a standard can be implemented, including the approaches outlined in this unit. EPA also seeks comment on whether and how to specify or define activities that would fall outside the scope of deleading.

2. *The need for a de minimis cutoff.* Many commenters on the 1994 proposal argued that EPA should adopt some type of threshold or *de minimis* cutoff below which an activity would not constitute deleading even if it otherwise meets the definition. Several commenters suggested that EPA establish 1,000 square feet as a *de minimis* level below which the deleading definition would not apply. These commenters indicated that many maintenance activities, such as spot welding and pipe cutting, require the removal of small areas of existing coatings and that a 1,000 square foot cutoff would appropriately exclude those activities. Whether a threshold or *de minimis* cutoff for the deleading definition would be necessary or appropriate is not entirely clear, and may depend upon the deleading definition ultimately adopted. As noted in Unit IV.A.1. of this document, the statutory definition of deleading may be interpreted to embody an intent standard, and does not include any consideration of the amount of lead or lead exposure that may be involved in the activity. See TSCA section 402(b). Therefore, if the statute were applied strictly according to its terms, an activity specifically intended to eliminate lead-based paint or a lead-based paint hazard would be considered deleading, even if it were a small project.

Under such an interpretation, EPA probably would not be inclined to adopt a *de minimis* exemption from these requirements. EPA believes that projects specifically designed to eliminate lead-based paint are unlikely to be small, and therefore a *de minimis* cutoff would be of limited utility. Small projects that might qualify for a *de minimis* exemption would be more likely to fall outside the deleading definition as routine maintenance activities, which would be excluded whatever their size.

On the other hand, if an intent standard were not applied or if EPA were to adopt one or the other of the two approaches discussed in Unit IV.A.1 of this document to implementing an intent standard, the deleading definition would cover most if not all activities resulting in the elimination of lead-based paint or its hazards. These approaches would appear to be more likely to result in the regulation of smaller projects. Therefore, if one of these approaches were adopted, EPA believes that it might be appropriate to consider adopting a *de minimis* cutoff below which activities

would be excluded from the deleading definition.

EPA requests comments on these issues as well. EPA would like comments on whether a *de minimis* exemption would be appropriate. In addition, commenters on the 1994 proposal suggested a variety of approaches to developing a *de minimis* cutoff, based on size of disturbed area, concentration of lead in paint, and job duration; EPA requests comment on these and other methods for specifying a *de minimis* level.

3. *Coverage of outside contractors vs. in-house employees.* Several commenters stated that the proposed deleading definition was ambiguous with respect to whether it covered only outside lead contractors, or in-house employees as well. Some argued that the ''offers to'' language included in the statutory deleading definition means that it applies only to outside contractors who ''offer to'' eliminate lead-based paint.

EPA has tentatively concluded that the deleading definition should encompass both in-house personnel and outside contractors. The thrust of the TSCA section 402 provisions relating to public and commercial buildings and steel structures is to ensure not only that contractors performing lead work in these areas are properly trained and certified, but also that any individuals conducting such work are properly trained and perform the work according to the standards called for by TSCA section 402. In this sense these provisions are distinct from those relating to target housing, which are focused solely on contractors. For example, the regulations must require that lead-based paint activities in target housing are conducted by certified contractors, 42 U.S.C. 2682(a)(1), but need not contain such a requirement with regard to lead-based paint activities in public or commercial buildings or steel structures. In addition, the regulations are to ''ensure that individuals engaged in [lead-based paint] activities'' are properly trained, without regard to whether they are employed by outside contractors.

Thus, EPA believes Congress intended that in the area of public and commercial buildings and steel structures, all lead-based paint activities, whether conducted by in-house personnel or outside contractors, are to be governed by the TSCA section 402 program. Since deleading is among the lead-based paint activities that may be conducted in these areas, EPA believes this term should encompass work performed by in-house personnel and outside contractors. The terms of the statutory deleading definition can be read to encompass both groups, in that in the same sense that a lead contractor would offer to perform lead work for a fee, an employee offers to perform duties as assigned in exchange for his or her wages. EPA requests comment on its tentative approaches to this issue.

4. *Prohibited activities.* In the 1994 proposal, EPA asked for comment on whether it should prohibit open-flame burning of painted surfaces, dry scraping or sanding of painted surfaces, and the use of heat guns on painted surfaces (59 FR 45889). EPA received many comments both supporting and opposing its discussion of prohibiting these deleading activities. Some commenters supported the prohibition, stating that there are data showing high-worker exposure to lead during these activities, that the containment used is only partially effective, and that alternative, safer methods exist. Other commenters opposed the prohibition, indicating that these commonly accepted methods of lead-based paint removal could be performed safely, that they are routinely used in deleading operations for which no other practical option exists, and that other methods are not safer or effective. Those commenters also argued that since these activities are allowed under the OSHA regulations, it would be problematic to prohibit them under EPA regulations.

EPA needs additional information before it can develop proposed approaches to this issue. EPA specifically requests comments that would include data on exposure, descriptions of how these activities can be performed safely, discussion of alternative approaches, discussion of situations lacking other practical options, and other information that would allow it to carefully weigh the issues before making its decision.

5. *Identification of lead-based paint activities.* TSCA section 402(b)(2) includes ''identification of lead-based paint and materials containing lead-based paint'' as a lead-based paint activity to be covered under EPA's requirements. In the 1994 proposal, EPA indicated that because of lead's toxicity, identification and sampling to determine the presence of lead-based paint are commonly practiced prior to maintenance work on commercial buildings and steel structures. Therefore, EPA stated that the supervisor should determine if lead-based paint exists prior to starting work. (59 FR 45889).

Many public commenters expressed great concern about EPA's requirement that the supervisor identify the lead-based paint. These commenters indicated that because the lead-based paint identification would be done before contracts are awarded, it was not an appropriate task for the supervisor.

Upon further review, it appears that EPA in its discussion in the proposal was addressing a different task than the public commenters were. EPA was considering the need to identify the presence of lead-based paint prior to the performance of routine maintenance activities as opposed to large deleading projects. Because TSCA section 402(b)(2) separates ''identification of lead-based paint'' from ''deleading,'' EPA believes that any identification of lead-based paint, including during routine maintenance activities, would be covered under the TSCA section 402 regulations. Further, EPA believes that its requirements for supervisor identification of lead-based paint prior to the performance of routine maintenance is appropriate. However, EPA also recognizes that identification of lead-based paint prior to the awarding of a deleading contract does present a different situation. One approach would be for EPA to describe a work practice standard for the identification of lead-based paint without assigning it to a specific discipline. EPA requests comments on whether this or another approach would be more appropriate for discharging its TSCA section 402 obligations to develop regulations for identification of lead-based paint.

### *B. Issue 2—The interface between OSHA's lead standards and EPA's TSCA section 402 regulations*

Congress' mandate that EPA develop regulations governing the conduct of lead-based paint activities naturally meant that EPA must consider regulations for workers. However, OSHA also has regulations covering exposure of workers to lead. In 1978, OSHA promulgated a final lead standard for general industry (29 CFR 1910.55). Further, in addition to requiring EPA to develop regulations, Title X also required OSHA, under section 1031, to issue regulations covering occupational exposure to lead in the construction industry. In 1993, OSHA issued the interim final lead in construction standard (29 CFR 1926.62). After consultation with OSHA, EPA included in its 1994 proposal specific requirements for training of workers conducting lead-based paint activities.

In response to the 1994 proposal, EPA received a number of comments arguing that some of its training requirements would overlap with those imposed under OSHA's regulations. EPA recognizes the importance of

minimizing any duplication or overlap between Federal regulatory programs. However, it is unclear whether there is true duplication in this instance, or if so, whether the simple removal of worker protection elements from EPA's curriculum requirements, as urged by some commenters, would address that issue consistently with EPA's mandate under TSCA section 402.

TSCA section 402(a)(1) directs EPA to establish a training and certification program for individuals and firms (''persons'') engaged in lead-based paint activities. Thus, before a person can conduct actions included among the lead-based paint activities identified in TSCA, or hold itself out as certified to conduct such activities, it must successfully complete the training program established by EPA and obtain the certification. By this program, Congress intended to protect not only the environment and the public in general and those who occupy buildings in which lead-based paint activities are conducted, but the workers themselves as well. See H.R. Rep. No. 852 Pt. 1, 102d Cong., 2d Sess. 44.

The OSHA training requirements apply to any workers who may be exposed to lead, and such workers must be trained initially (i.e., prior to job assignment), and annually thereafter. See 29 CFR 1926.6(l) (lead in construction); 29 CFR 1910.1025(l) (general occupational exposure to lead). OSHA's program is both narrower and broader than EPA's program. It is narrower in the sense that it is focused solely on protecting workers who may be exposed to lead, and it does not require prior certification (although it does require prior training). It is broader in the sense that it is triggered any time there may be worker exposure to lead, not just when a firm conducts lead-based paint activities. In any event, when a firm conducts the ''lead-based paint activities'' defined in the statute, one of the OSHA standards will be triggered. That is, where employees are exposed to lead above the action level of 30$\mu g/m^3$, the lead in construction standard will be triggered. For employees exposed to lead below the action level, the general occupational exposure to lead standard will be triggered.

However, EPA does not believe that the OSHA program is sufficient in and of itself to discharge EPA's responsibilities under TSCA section 402, which include protecting not only workers, but persons other than workers as well as the environment. EPA believes that it is necessary to develop additional regulations to completely address Congress' concerns. In the 1996 final rule for lead-based paint activities in target housing and child-occupied facilities, EPA did not include the type of training requirements that would be included in the OSHA requirements. Instead, EPA included a requirement under the work practice standards at 40 CFR 745.227(e)(3) that all abatement activities be conducted according to EPA's requirements and all other Federal, State, and local requirements. This requirement ensures that OSHA's training requirements will be met. EPA believes that this approach eliminates unnecessary duplication while still discharging the mandates of Title IV. Additionally, EPA encourages training providers to develop courses that include both EPA's and OSHA's requirements applicable to lead-based paint activities.

EPA consulted with OSHA during the development of the 1994 proposal and the 1996 final rule. EPA also will consult with OSHA during the continuing development of the regulations for workers conducting lead-based paint activities in buildings and structures. However, EPA would like to receive additional comment on whether the public believes that the approach used in the 1996 rule for addressing overlap between OSHA regulations and EPA regulations for target housing and child-occupied facilities would also be appropriate for EPA regulations for buildings and structures. EPA requests comments on other approaches that could be used to reduce redundancy in training requirements.

### *C. Issue 3—Distinguishing among building and structure types*

TSCA section 402(b)(2) indicates that lead-based paint activities for ''any public building constructed before 1978, commercial building, bridge, or other structure or superstructure'' should be covered. None of these terms are defined in Title IV, but EPA did define ''public building,'' ''commercial building,'' and ''superstructure'' in the 1994 proposal. In response to the 1994 proposal, EPA received a variety of comments indicating that certain facilities should not be covered for different reasons. Some commenters stated that industrial facilities should not be covered, because they are neither public nor commercial buildings. Others suggested that ''commercial building'' should include any building used primarily for manufacturing, industrial activity, and various services. Still other commenters argued that the only structures that EPA could cover were bridges because these were the only ones specifically mentioned in the statute. However, EPA believes that the phrase ''other structure or superstructure'' is sufficiently broad to capture most buildings and structures in existence. The definitions for buildings and structures will be discussed followed by a discussion of approaches for categorizing requirements.

1. *Defining buildings and structures*—

a. *Buildings.* In the 1994 proposal, individuals and firms conducting lead-based paint activities in public buildings would have been required to adhere to the same regulations as in target housing, regardless of whether children frequented the buildings. However, in response to comments received on this proposal, in the 1996 rule, EPA established a sub-category of public buildings, termed ''child-occupied facilities.'' Under these regulations, individuals and firms conducting lead-based paint activities in child-occupied facilities are subject to the same requirements as individuals and firms conducting those activities in target housing. At the same time, EPA stated that requirements for lead-based paint activities conducted in public buildings other than child-occupied facilities (''public buildings'') would be included in the rulemaking for commercial buildings and steel structures. EPA now must develop a definition that applies to public buildings other than child-occupied facilities.

In the 1994 proposal, EPA distinguished commercial buildings from public buildings by defining commercial buildings as buildings used primarily for commercial or industrial activities and generally not open to the public or occupied or visited by children. Because EPA has already defined the sub-category of child-occupied facilities and has included the rest of public buildings in this rulemaking, it may be necessary to reconsider the relationship of public to commercial buildings and redefine the distinction. EPA received comments on the 1994 proposal suggesting that EPA use more standard building definitions such as those found in building codes which generally classify by use or occupancy.

EPA would like additional comment on whether it is more useful for EPA to adopt standard terminology for building types or whether EPA should continue to distinguish buildings based on public access. The public access issue will also be discussed further in Unit IV.C.2.b. of this document.

b. *Structures.* In the 1994 proposal, EPA defined a ''superstructure'' as a large steel or other industrial structure, including but not limited to bridges or water towers which may contain lead-

based paint. Commenters strongly objected to the term ''superstructures.'' Therefore, in the interim, until a term is defined in the future, EPA will use the term ''steel structure'' in lieu of ''superstructure.'' In the 1994 proposal, EPA indicated that this category would also include water towers, above-ground storage tanks, oil refineries, utility and other structures. Given the language of the statute, EPA believes that it has broad latitude to cover these other types of structures.

EPA would like additional comment on what the best term is for this category of structures.

2. *Determining whether separate requirements should be established according to building/structure types*—

a. *Separate categories for buildings and structures.* In the 1994 proposal, EPA grouped target housing and public buildings together separate from commercial buildings and steel structures. EPA based this distinction on the potential for lead exposure to the public and the differences in the structural design and building materials used. The way that EPA distinguishes between public and commercial buildings may continue to suggest that these two building types be treated separately. Additionally, commenters suggested that there may also be support for treating steel structures separately from both building types. One of the reasons for this distinction was suggested by commenters who indicated that because workers are so strictly controlled by supervisors when conducting lead-based paint activities on steel structures, the primary focus of EPA's requirements should be on the supervisors.

b. *Categories based on public access and environmental concerns.* EPA recognizes that many government and industrial buildings restrict public access and that potential public exposure during any lead-based paint activities would be greatly reduced in those buildings relative to, for example, museums or airports. Nevertheless, Congress specified that EPA regulate lead-based paint activities in buildings and structures, generally. While public access may be low in many buildings, there are still environmental concerns and these buildings are occupied by employees and other persons, in addition to the workers who would be subject to OSHA protection. EPA believes that it is important to prescribe standards to reduce exposure to those persons other than workers who would be present.

Because of the disparity in exposure to the public and the environment presented by the various locations and restrictions on access to buildings and structures, EPA believes that it may be appropriate to define categories of work practice standards based on public exposure/accessibility and proximity to certain environmental features, such as lakes, wetlands, or endangered species. For example, EPA believes that more controls may be warranted when lead-based paint activities are being conducted in a popular museum in a large city or on a water tower located next to a daycare facility or playground than at a restricted access facility or warehouse on the outskirts of town. If EPA takes this approach, EPA would need to consider whether the same or different categories could be used for buildings and structures.

Commenters on the 1994 proposal also raised the issue of ''mixed-use'' buildings where one small area of a building is open to the public (e.g., for bill paying) or serves as a daycare center, but the rest of the building has restricted public access.

EPA requests comments on the suggested approach of categorizing by public and environmental accessibility. EPA requests suggestions on the criteria for the various categories that would be developed under such an approach. In addition, EPA requests comments on alternative approaches that would allow EPA to appropriately fulfill its obligations under TSCA section 402(a).

*D. Issue 4—Use of pre-existing courses and regulations*

TSCA section 402(a)(1) requires EPA to promulgate regulations governing lead-based paint activities to ensure, among other items, that training programs for individuals engaged in lead-based paint activities are accredited. TSCA section 402(a)(2) states that these accreditation regulations must contain specific requirements for the accreditation of lead-based paint activities training programs. These requirements must include, at least: Minimum requirements for the accreditation of training providers; minimum training curriculum requirements; minimum training hour requirements; minimum hands-on training requirements; minimum trainee competency and proficiency requirements; and minimum requirements for training program quality control.

In the 1994 proposal, EPA laid out specific training requirements and work practice standards for lead-based paint activities in public buildings, commercial buildings, and steel structures. In response to the 1994 proposal, commenters noted that many in-house courses on conducting lead-based paint activities in buildings and structures already existed. Some of these commenters indicated that because of the existence of these courses, there was no need for EPA to develop regulations. Other commenters suggested that EPA incorporate into its regulations pre-existing courses, such as those provided by the Steel Structures Painting Council.

Congress in TSCA section 402(a) required EPA to specify requirements for accreditation of training courses for persons involved in lead-based paint activities. However, EPA recognizes that there are many training programs currently in place and therefore encourages commenters to submit to EPA during the comment period on this document information about training programs that would assist EPA in developing its regulations.

EPA is also aware that subsequent to the publication of the 1994 proposal, some states have promulgated or are in the process of developing State regulations governing lead-based paint activities in buildings and/or structures. EPA is familiar with the Minnesota regulations for removal of lead paint from steel structures and is considering utilizing some of the approaches embodied in those regulations. EPA would also appreciate information from other states, tribes, and localities that have developed or are considering developing regulations covering lead-based paint activities in buildings and/or structures.

## V. Public Record

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–62128B (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 12 noon 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:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by

the docket control number OPPTS–62128B. Electronic comments on this rulemaking may be filed online at many Federal Depository Libraries.

Supplemental documents relating to the rulemaking and the public meeting will be posted at the following Internet address:

http://www.epa.gov/opptintr/lead/index.html

### List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping.

Dated: August 19, 1997.

**William H. Sanders, III,**

*Director, Office of Pollution Prevention and Toxics.*

[FR Doc. 97–22517 Filed 8–21–97; 8:45 am]

BILLING CODE 6560–50–F

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 23

**RIN 1018–AE16**

## Changes in List of Species in Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, or ''the Convention'') regulates international trade in certain animals and plants. Species for which such trade is controlled are listed in Appendices I, II, and III to the Convention.

This document announces decisions by the Conference of the Parties to CITES on amendments to Appendices I and II, and repeats a previous request (62 FR 31054) for comment on whether the United States should enter reservations on any of the amendments. The effect of a reservation would be to exempt this country from implementing CITES for a particular species. However, even if a reservation were taken, many importing countries would require comparable documents, and many importers to the United States would be required, under the Lacey Act Amendments of 1981, to obtain permits issued by foreign countries. The CITES amendments to Appendices I and II described in this document will enter into effect on September 18, 1997, unless specifically indicated otherwise. Reference is also made here to establishment by the Parties of an export quota for the markhor, a species both included in Appendix I and listed as Endangered under the Endangered Species Act, and the implications for the importation of markhor sport-hunted trophies into the United States.

**DATES:** The amendments to Appendices I and II adopted at the recent meeting of the Conference of the Parties become effective 90 days after their adoption under the terms of CITES and therefore are enforceable as of September 18, 1997, with the exception of the amendments concerning sturgeons, which will take effect on April 1, 1998. The Service will consider all comments received by September 12, 1997, in determining whether the United States should enter any reservations.

**ADDRESSES:** Please send correspondence concerning this proposed rule to Chief, Office of Scientific Authority; 4401 North Fairfax Drive, Room 750; Arlington, Virginia 22203. Fax number: 703–358–2276. Comments and other information received are available for public inspection by appointment, from 8 a.m. to 4 p.m. Monday through Friday, at the Arlington, Virginia address.

**FOR FURTHER INFORMATION CONTACT:** Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Arlington, Virginia, telephone 703–358–1708.

**SUPPLEMENTARY INFORMATION:**

### Background

CITES regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which the trade is controlled are included in three Appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that, although not necessarily now threatened with extinction, may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other listed species may be brought under effective control (e.g., because of similarity-of-appearance problems). Appendix III includes species that any Party identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties to control trade. Any Party may propose amendments to Appendices I and II for consideration at meetings of the Conference of the Parties. The text of any proposal must be communicated to the CITES Secretariat at least 150 days before the meeting. The Secretariat must then consult the other Parties and appropriate intergovernmental agencies, and communicate their responses to all Parties no later than 30 days before the meeting.

### Recent Decisions

The tenth meeting of the Conference of the Parties to CITES (COP10) was held June 9-20, 1997, in Harare, Zimbabwe. At the meeting, the Parties considered 62 different animal proposals and 13 different plant proposals to amend the Appendices. These were described in the **Federal Register** on April 16, 1997, for proposals submitted by the United States (62 FR 18559), and on June 6, 1997, for proposals submitted by other Parties (62 FR 31054). All proposed amendments not withdrawn by the proponents were considered and acted upon by Committee I during the Conference, with each accredited attending Party having one vote. Adoption of amendments by Committee I requires either consensus or, in case of a vote, a two-thirds majority of those Parties present and voting (abstentions not included). Action by Committee I on species proposals was accepted by the Plenary session, unless a motion to reopen debate was put to vote and approved by one-third of the non-abstaining Parties voting.

Debate was reopened and votes recast on the following proposals that had not received the required two-thirds majority in Committee I: the proposal on the southern white rhinoceros (*Ceratotherium simum simum*) by South Africa; the proposal on the ultramarine lorikeet (*Vini ultramarina*) by Germany; and an amended proposal on the hawksbill sea turtle (*Eretmochelys imbricata*) by Cuba. The proposal on the ultramarine lorikeet was adopted in Plenary. The proposal on the southern white rhinoceros and the amended proposal on the hawksbill sea turtle, however, were rejected.

The use of the secret ballot process for voting on species proposals was more widespread at COP10 than at past conferences. This was due in part to a change in the Rules of Procedure adopted at COP9, which reduced the number of seconding Parties required to sustain a motion for a secret ballot, and in part to the number of controversial proposals up for consideration. Secret ballots were cast in Committee I on all whale proposals, the hawksbill turtle proposal, all elephant proposals, and the proposal on bigleaf mahogany. A call by Panama for a secret ballot on the United States' proposal to include the sawfishes in Appendix I was rejected.

One secret ballot was also cast in Committee II. All proposals brought to a vote in Plenary, except that on the ultramarine lorikeet, were conducted by secret ballot. The United States believes that the position of CITES Parties on species proposals should be public and the voting process transparent. Consequently, the United States delegation announced on the floor or in other public fora its vote on species proposals conducted by secret ballot at COP10. The United States in Committee I voted for the proposal on bigleaf mahogany and against all other proposals voted on by secret ballot.

Species proposals advanced by the United States met with mixed results. Proposals on the green-cheeked parrot (*Amazona viridigenalis*), straw-headed bulbul (*Pycnonotus zeylanicus*), sturgeons (Acipenseriformes), three species of mussels (Unionidae), and Tweedy's bitterroot (*Lewisia tweedyi*) were adopted by consensus, and goldenseal (*Hydrastis canadensis*) by vote. The effective date of the sturgeon proposal was amended to April 1, 1998, to allow enough time for identification techniques to be refined and made operational. The proposal to include all sawfishes (Pristiformes) in Appendix I encountered bloc opposition from Parties concerned about CITES involvement in marine species issues and was defeated. The United States was persuaded by arguments from other Parties that, in light of the endemic status of the alligator snapping turtle (*Macroclemys temminckii*) and timber rattlesnake (*Crotalus horridus*) in the United States and apparently low levels of international trade in both species, the conservation value of an Appendix II listing was questionable. The United States therefore withdrew these proposals and stated that it will consider, at least for the alligator snapping turtle, whether an Appendix III listing will provide the insights needed into the effect of international trade on its conservation status. State wildlife agencies will be fully consulted in the process of considering this approach. The proposal on nine species of map turtles (*Graptemys spp.*), though supported by a majority of the Parties, fell one vote short of the required two-thirds majority. Nonetheless, the Service will continue its cooperative approach with the States to identify appropriate conservation strategies for these and other native reptile species that are involved in international trade.

Although disappointed with the close negative vote on inclusion of bigleaf mahogany (*Swietenia macrophylla*) in Appendix II (the vote was 67 Parties in favor, 45 opposed, failing by 8 votes to reach the required two-thirds majority), the United States looks forward to progress in the conservation of this species, in the context of a number of range States' Appendix III listings and other efforts. Brazil, Bolivia, and Mexico stated in Plenary that they would include their populations in Appendix III. (Costa Rica included the species in Appendix III in 1995—see 61 FR 6793.) In addition, a mahogany working program is being established for 18 months (through 1998) that will provide for discussion among all range States, major importing countries, and pertinent organizations on conservation and sustainable trade of bigleaf mahogany.

The Conference of the Parties also accepted a determination by the Nomenclature Committee that the CITES listing of the urial sheep, *Ovis vignei*, in Appendix I only applies to the subspecies *Ovis vignei vignei* and that other subspecies of *Ovis vignei* are not presently listed. This determination reverses an earlier decision of the Nomenclature Committee (reported in 61 FR 67293, December 10, 1996) that the entire species must be considered listed, because the taxon originally intended for listing could not be determined with certainty. The reversal was made on the basis of compelling evidence provided by the Depositary Government (Switzerland) from transcripts of committee discussions during the Plenipotentiary meeting (in 1973) and COP1 (in 1976). This interpretation is consistent with the interpretation long held by the United States. It is anticipated that Germany will submit a proposal to COP11 to include the other subspecies in Appendix II and that such a proposal will be supported by the range States.

Although there are no CITES listing implications, the Service wishes to note the action of the Parties at COP10 in adopting a resolution submitted by Pakistan to establish an annual export quota of six markhor (*Capra falconeri*) sport-hunted trophies. This species is included in Appendix I. Although adoption by the Parties of a quota for export of an Appendix I species normally constitutes assurance to the exporting country that exports within the established quota will be accepted by importing countries, stricter domestic measures may in some cases override such assurances. In the case of the markhor, two subspecies, *Capra falconeri megaceros* (includes *C. f. jerdoni*) and *Capra falconeri chialtanensis* (= *C. aegagrus*), are listed as Endangered under the U.S. Endangered Species Act (ESA). A finding of enhancement completely independent of any CITES finding would have to be made for import of either of these ESA-listed subspecies into the United States.

Results of actions by the Conference of the Parties on the proposed amendments to the Appendices are given in the table below:

| Species | Proposed amendment | Proponent | Decision of the parties |
|---|---|---|---|
| MAMMALS | | | |
| Order Diprotodontia: | | | |
| *Burramys parvus* (Mountain pygmy possum). | Deletion from Appendix II | Australia | Adopted. |
| *Dendrolagus bennettianus* and *D. lumholtzi* (Bennett's and Lumholtz's tree kangaroos). | Deletion from Appendix II | Australia | Adopted. |
| Order Xenarthra: | | | |
| *Chaetophractus nationi* (Hairy armadillo) | Inclusion in Appendix I | Bolivia | Adopted as amended to include in Appendix II. |
| Order Cetacea: | | | |
| *Eschrichtius robustus* (Gray whale) | Transfer of the Eastern Pacific stock from Appendix I to II. | Japan | Rejected. |
| *Balaenoptera acutorostrata* (Minke whale) | Transfer of the Okhotsk Sea West Pacific stock from Appendix I to II. | Japan | Rejected. |
| *Balaenoptera acutorostrata* (Minke whale) | Transfer of the Southern Hemisphere stock from Appendix I to II. | Japan | Rejected. |

| Species | Proposed amendment | Proponent | Decision of the parties |
|---|---|---|---|
| *Balaenoptera acutorostrata* (Minke whale) | Transfer of the Northeast Atlantic and the North Atlantic Central stocks from Appendix I to II. | Norway | Rejected. |
| *Balaenoptera edeni* (Bryde's whale) | Transfer of the North Pacific Western stock from Appendix I to II. | Japan | Withdrawn. |
| Order Carnivora: | | | |
| *Ursus arctos* (Brown bear) | Transfer of all Asian and European populations from Appendix II to I. | Finland, Bulgaria, and Jordan. | Rejected. |
| *Panthera onca* (Jaguar) | Establishment of annual export quotas for hunting trophies of zero in 1997, 1998, and 1999 and of 50 thereafter. | Venezuela | Withdrawn. |
| Order Proboscidea: | | | |
| *Loxodonta africana* (African elephant) | Transfer of the Botswanan population from Appendix I to II, with certain annotations. | Botswana, Namibia, and Zimbabwe. | Adopted as amended.[1] |
| *Loxodonta africana* (African elephant) | Transfer of the Namibian population from Appendix I to II, with certain annotations. | Botswana, Namibia, and Zimbabwe. | Adopted as amended.[2] |
| *Loxodonta africana* (African elephant) | Transfer of the Zimbabwean population from Appendix I to II, with certain annotations. | Botswana, Namibia, and Zimbabwe. | Adopted as amended.[3] |
| Order Perissodactyla: | | | |
| *Ceratotherium simum simum* (Southern white rhinoceros). | Amendment to annotation 503 in the CITES Appendice) to allow trade in parts and derivatives but with a zero export quota. | South Africa | Rejected. |
| Order Artiodactyla: | | | |
| *Pecari tajacu* (Collared peccary) | Deletion from Appendix II (Mexican population). | Mexico | Adopted. |
| *Vicugna vicugna* (Vicuña) | Annotated transfer of certain populations to Appendix II[4]. | Argentina | Adopted. |
| *Vicugna vicugna* (Vicuña) | Annotated transfer of certain populations to Appendix II. | Bolivia | Adopted as amended.[5] |
| *Vicugna vicugna* (Vicuña) | Amendment to annotation 504 in the CITES Appendices list to replace the words ''VICUÑANDES-CHILE'' and ''VICUÑANDES-PERU'' with the words ''VICUÑA-COUNTRY OF ORIGIN''. | Peru | Adopted. |
| *Vicugna vicugna* (Vicuña) | Amendments to annotation 504 (in the CITES Appendices list) to allow also the countries that are members of the Vicuña Convention to utilize the term VICUÑA-PAIS DE ORIGEN-ARTESANIA, along with the authorized trademark, on luxury handicrafts and knitted articles made of wool sheared from live vicuñas from Appendix II populations. | Peru | Adopted. |
| *Elaphurus davidianus* (Père David's deer) | Inclusion in Appendix II | Argentina and China | Withdrawn. |
| *Bison bison athabascae* (Wood bison) | Transfer from Appendix I to II in accordance with precautionary measure B.2.b) of Resolution Conf. 9.24, Annex 4. | Canada | Adopted. |
| *Bos javanicus* (Banteng) | Inclusion in Appendix I | Thailand | Withdrawn. |
| *Bubalus arnee* (Water buffalo) | Inclusion in Appendix I | Thailand | Withdrawn. |
| *Ovis Ammon nigrimontana* (Kara Tau argali). | Transfer from Appendix II to I | Germany | Adopted. |
| BIRDS | | | |
| Order Galliformes: | | | |
| *Pauxi pauxi* (Northern Helmeted curassow). | Inclusion in Appendix II | Netherlands | Withdrawn. |
| *Pauxi unicornis* (Horned curassow) | Inclusion in Appendix II | Netherlands | Withdrawn. |
| Order Gruiformes: | | | |
| *Turnix melanogaster* (Black-breasted button-quail). | Deletion from Appendix II | Australia | Adopted. |
| *Pedionomus torquatus* (Plains wanderer) | Deletion from Appendix II | Australia | Adopted. |
| *Gallirallus australis hectori* (Eastern weka rail). | Deletion from Appendix II | New Zealand | Adopted. |
| Order Psittaciformes: | | | |
| *Amazona agilis* (Black-billed parrot) | Transfer from Appendix II to I | Germany | Withdrawn. |
| *Amazona viridigenalis* (Red-crowned parrot). | Transfer from Appendix II to I | Mexico, United States, and Germany. | Adopted. |
| *Cacatua sulphurea* (Lesser sulphur-crested cockatoo). | Transfer from Appendix II to I | Germany | Withdrawn. |
| *Eunymphicus cornutus uvaeensis* (Ouvea horned parakeet). | Transfer from Appendix II to I | Germany | Withdrawn. |
| *Vini kuhlii* (Kuhl's lorikeet) | Transfer from Appendix II to I | Germany | Rejected. |
| *Vinni peruviana* (Tahitian lorikeet) | Transfer from Appendix II to I | Germany | Rejected. |
| *Vini ultramarina* (Ultramarine lorikeet) | Transfer from Appendix II to I | Germany | Adopted |

| Species | Proposed amendment | Proponent | Decision of the parties |
|---|---|---|---|
| Order Caraciiformes: | | | |
| *Aceros waldeni* (Writhed-billed hornbill) | Transfer from Appendix II to I | Germany | Withdrawn. |
| Order Passeriformes: | | | |
| *Pycnonotus zeylanicus* (Straw-headed bulbul). | Inclusion in Appendix II | Netherlands and the United States. | Adopted. |
| *Leiothrix argentauris* (Silver-eared mesia) | Inclusion in Appendix II | Netherlands | Adopted. |
| *Leiothrix lutea* (Pekin robin) | Inclusion in Appendix II | Netherlands | Adopted. |
| *Liocichla omeiensis* (Omei Shan liochichla). | Inclusion in Appendix II | Netherlands | Adopted. |
| *Tangara fastuosa* (Seven-colored tanager) | Inclusion in Appendix II | Germany and the Netherlands. | Adopted. |
| *Amandava formosa* (Green avadavat) | Inclusion in Appendix II | Netherlands | Adopted. |
| *Padda oryzivora* (Java sparrow) | Inclusion in Appendix II | Netherlands | Adopted. |
| *Gracula religiosa* (Hill mynah) | Inclusion in Appendix II | Netherlands and the Philippines. | Adopted. |
| REPTILES | | | |
| Order Testudinata: | | | |
| *Macroclemys temminckii* (Alligator snapping turtle). | Inclusion in Appendix II | United States | Withdrawn. |
| *Callagur borneoensis* (Painted terrapin) | Inclusion in Appendix II | Germany | Adopted. |
| *Graptemys* (Map turtles) | Inclusion of nine species in Appendix II | United States | Rejected. |
| *Eretmochelys imbricata* (Hawksbill sea turtle). | Transfer of the Cuban population from Appendix I to II with certain annotations. | Cuba | Rejected. |
| Order Crocodylia: | | | |
| *Caiman latirostris* (Broad-snouted caiman) | Transfer of the Argentine population from Appendix I to II, for purpose of ranching. | Argentina | Adopted. |
| *Crocodylus niloticus* (Nile crocodile) | Maintenance of the Malagasy population in Appendix II, for purpose of ranching. | Madagascar | Adopted. |
| *Crocodylus niloticus* (Nile crocodile) | Establishment of an annual export quota of 1,000 skins and 100 hunting trophies from wild animal for years 1998–2000. | Tanzania | Adopted. |
| *Crocodylus noloticus* (Nile crocodile) | Maintenance of the Ugandan population in Appendix II, for purpose of ranching. | Uganda | Adopted. |
| Order Sauria: | | | |
| *Varanus bengalensis* (Indian monitor) | Transfer of the population of Bangladesh from Appendix I to II subject to annual export quotas of 150,000 skins in 1997 and 225,000 in 1998 and 1999. | Bangladesh | Rejected. |
| *Varanus flavescens* (Yellow monitor) | Transfer of the population of Bangladesh from Appendix I to II subject to annual export quotas of 100,000 skins in 1997, 1998, and 1999. | Bangaladesh | Rejected. |
| Order Serpentes: | | | |
| *Crotalus horridus* (Timber rattlesnake) | Inclusion in Appendix II | United States | Withdrawn. |
| AMPHIBIANS | | | |
| Order Anura: | | | |
| *Mantella bernhardi, M. cowani, M. viridis,* and *M. haraldmeieri* (Golden mantella frogs). | Inclusion in Appendix II | Netherlands | Withdrawn. |
| FISHES | | | |
| Order Acipenseriformes (Sturgeons) | Inclusion of all presently unlisted species in Appendix II. | Germany and the United States. | Adopted as amended.[6] |
| Order Pristiformes (Sawfishes) | Inclusion in Appendix I | United States | Rejected. |
| MOLLUSKS | | | |
| *Fusconaia subrotunda, Lampsilis brevicula,* and *Lexingtonia dolabelloides* (Unionid mussels). | Deletion from Appendix II | United States | Adopted. |
| *Paryphanta* spp. (New Zealand amber snails) | Deletion from Appendix II | Switzerland | Adopted. |
| OTHER ANIMAL PROPOSALS | | | |
| Any Appendix II species annotated to limit the trade to certain types of specimens. | Amendment to the relevant annotations of Appendix II species annotated to limit the trade to certain types of specimens, to include the following wording: ''All other specimens shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly''. | Switzerland | Adopted.[7] |

| Species | Proposed amendment | Proponent | Decision of the parties |
|---|---|---|---|
| PLANTS—GENERAL | | | |
| Araliaceae: *Panax quinquefolius* (American ginseng). | Amend the Appendix II listing of this species (*cf.* current annotation #3), to include only the followiong parts: ''Whole and sliced roots and parts of roots, excluding manufactured, processed products such as powders, extracts, pills, tonics, teas and confectionary''. | Switzerland | Adopted as amended.[8] |
| Cactaceae spp. (Cacti): Mexican cacti | Amend the Appendix II listing for this family (*cf.* current annotation #4), to include seeds from Mexican cacti originating in Mexico. | Mexico | Adopted as amended.[9] |
| Leguminosae (Fabaceae): *Pericopsis elata* (Afrormosia), and Meliaceae: *Swietenia mahagoni* (Caribbean mahogany). | Amend the Appendix II listing of these two species (*cf.* current annotation #5), to include only the following parts: ''Logs, sawn wood and veneer sheets''. | Switzerland | Adopted. |
| Meliaceae: *Swietenia macrophylla* (Bigleaf mahogany). | Include in Appendix II with an annotation to cover logs, sawn wood, and veneer sheets only. | United States and Bolivia. | Rejected as amended.[8] |
| Portulacaceae: *Lewisia tweedyi* (Tweedy's bitterroot). | Delete from Appendix II | United States | Adopted. |
| Proteaceae: *Orothamnus zeyheri* (Marsh-rose) | Transfer from Appendix I to Appendix II, in accordance with precautionary measure B.2.b of Resol. Conf. 9.24, Annex 4. | South Africa | Adopted. |
| *Protea odorata* (Ground-rose or Swartland sugarbush). | Transfer from Appendix I to Appendix II, in accordance with precautionary measure B.2.b of Resol. Conf. 9.24, Annex 4. | South Africa | Adopted. |
| Ranunculaceae: *Hydrastis canadensis* (Goldenseal). | Include in Appendix II, along with only the following parts: ''Roots, rhizomes or rootstocks, and specimens recognizable as being parts thereof''. | United States | Adopted as amended.[8] |
| Scrophulariaceae: *Picrorhiza kurrooa* (Kutki) | Include in Appendix II, along with only the following parts: ''Roots and readily recognizable parts thereof''. | India | Adopted. |
| Theaceae: *Camellia chrysantha*, which is *Camellia petelotii* in part (Golden-flowered camellia). | Delete from Appendix II | China | Adopted. |
| Valerianaceae: *Nardostachys grandiflora* (=*Nardostachys jatamansi* misapplied) (Himalayan nard or spikenard). | Include in Appendix II, along with only the following parts: ''Whole and sliced roots and parts of roots, excluding manufactured, processed products such as powders, extracts, pills, tonics, teas and confectionary''. | India | Adopted as amended.[8] |
| PLANTS—ARTIFICIAL PROPAGATION | | | |
| Families other than Orchidaceae (Orchids) | Amend the listings of most plant families now in Appendix II (current annotations #1, #2, #4, and #8), to also exclude the following part: ''Cut flowers of artificially propagated plants''. | Switzerland | Adopted. |
| Cactaceae spp. (Cacti): (1) Hybrid Easter cactus; (2) Crab cactus, Christmas cactus; (3) Red cap cactus, Oriental moon cactus; and (4) Bunny ears cactus. | Amend the Appendix II listing for this family (*cf.* current annotation #4), to exclude artificially propagated specimens of the following hybrids and/or cultivars: (1) *Hatiora graeseri* (=*H. gaertneri H. rosea*); (2) *Schlumbergera* (=*Zygocactus*) *truncata* cultivars, and its hybrids with *S. opuntioides* (=*S. exotica*), *S. orssichiana*, and *S. russelliana* (=*S. buckleyi*); (3) *Gymnocalycium mihanovichii* cultivars lacking chlorophyll, grafted to *Hatiora* 'Jusbertii', *Hylocereus trigonus* or *H. undatus*; and (4) *Opuntia microdasys*. | Denmark | Adopted as amended.[8, 10] |
| Euphorbiaceae: Succulent *Euphorbia* spp. (Succulent euphorbs): Three-ribbed milk tree. | Amend the Appendix II listing of succulent *Euphorbia* spp., with an annotation to exclude artificially propagated specimens of *Euphorbia trigona* cultivars. | Denmark | Adopted. |

| Species | Proposed amendment | Proponent | Decision of the parties |
|---|---|---|---|
| Primulaceae: *Cyclamen* spp. (Cyclamens): Florist's cyclamen. | Amend the Appendix II listing of *Cyclamen* spp., with an annotation to exclude artificially propagated specimens of the cultivars of *Cyclamen persicum,* except when traded as dormant tubers. | Denmark ..... | Adopted as amended.[8], [10] |

[1] Originally annotated to allow: a) the direct export of registered stocks of whole raw tusks of Botswana origin to one trading partner (Japan) subject to annual quotas of 12.68 tons in 1998 and 1999; b) international trade in hunting trophies; and c) international trade in live animals to appropriate and acceptable destinations. Amended to qualify the provision for export of sport-hunting trophies with the phrase ''for non-commercial purposes.'' Further amended to qualify the provision for export of ivory stockpiles as follows: ''No international trade in ivory before 18 months after the transfer to Appendix II comes into effect. Thereafter an experimental quota for raw ivory not exceeding 25.3 tons may be traded with Japan subject to conditions established in Decision No. XX to the Conference of the Parties.'' (Note: Decision No. XX establishes nine conditions that need to be met before trade in raw ivory can be resumed; directs the CITES Standing Committee to make available the evaluation of legal and illegal trade and legal offtake as established through Resolution Conf. 9.16(Rev.) as soon as possible after the experimental trade has taken place; and further directs the Standing Committee to identify in cooperation with the range States any negative impacts of the resumption of trade and determine and propose corrective measures. A copy of Decision No. XX may be obtained from the Office of Scientific Authority.)

[2] Originally annotated to allow: a) the direct export of registered stocks of whole raw tusks of Namibian origin owned by the government of Namibia to one trading partner (Japan) that will not re-export, subject to annual quotas that will not exceed 6,900 kg. between September 1997 and August 1998 and between September 1998 and August 1999; b) international trade in live animals to appropriate and acceptable destinations for non-commercial purposes; and c) international trade in hunting trophies for non-commercial purposes. Amended to qualify the provision for export of sport-hunting trophies with the phrase ''for non-commercial purposes.'' Further amended to qualify the provision for export of ivory stockpiles as follows: ''No international trade in ivory before 18 months after the transfer to Appendix II comes into effect. Thereafter an experimental quota for raw ivory not exceeding 13.8 tons may be traded with Japan subject to conditions established in Decision No. XX to the Conference of the Parties.'' (Note: see footnote #1 for a summary of Decision No. XX.)

[3] Originally annotated to allow: a) the direct export of registered stocks of whole raw tusks to one trading partner (Japan) subject to annual quotas of 10 tons in 1998 and 1999; b) international trade in hunting trophies; c) international trade in live animals to appropriate and acceptable destinations; d) international trade in non-commercial shipments of leather articles and ivory carvings; and e) export of hides. Amended to qualify the provision for export of sport-hunting trophies with the phrase ''for non-commercial purposes.'' Further amended to qualify the provision for export of ivory stockpiles as follows: ''No international trade in ivory before 18 months after the transfer to Appendix II comes into effect. Thereafter an experimental quota for raw ivory not exceeding 20 tons may be traded with Japan subject to conditions established in Decision No. XX to the Conference of the Parties.'' (Note: see footnote #1 for a summary of Decision No. XX.)

[4] Transfer of the population of the Province of Jujuy and of the semicaptive populations of the Provinces of Jujuy, Salta, Catamarca, La Rioja, and San Juan, Argentina, from Appendix I to II, with an annotation to allow only the international trade in wool sheared from live vicunas, and in cloth and manufactured items made thereof, under the mark ''VICUÑA-ARGENTINA.''

[5] Transfer of the populations of the Conservation Units of Mauri-Desaguadero, Ulla Ulla, and Lipez-Chicas, Bolivia, from Appendix I to II, with an annotation to allow only the international trade in cloth and manufactured items made thereof, under the mark ''VICUÑA-BOLIVIA.'' Amended to establish an initial export quota of zero.

[6] Amended to establish a delayed effective date of April 1, 1998. The Parties passed a resolution in association with this amendment to the Appendices that recognizes the conservation problems facing Caspian Sea sturgeons and the need for assistance in that region to assure effective implementation of the listings. It further advocates accedence of key sturgeon range States to CITES and the formulation of a management plan for the Caspian Sea sturgeon fishery.

[7] In a related Decision passed by the Parties, it was agreed that a working group would be established under the aegis of the Standing Committee to study the expanding array of problems and confusion arising from the use of product annotations in the Appendices. The working group will report to COP11.

[8] The text in the amendment column at left gives the result as amended at COP10, which differs from that provided in the FEDERAL REGISTER notice of June 6, 1997 (62 FR 31054) with regard to the parts and/or derivatives included. The amendments were either minor changes in wording to clarify the proposal's intent, or involved additional parts and/or derivatives that were excluded.

[9] The text in the amendment column at left gives the result as amended at COP10, which differs from that provided in the FEDERAL REGISTER notice of June 6, 1997 (62 FR 31054) by also including the seeds originating in Mexico from artificial propagation. This revision was recommended by the CITES Secretariat in Doc. 10.89, Annex 1. The seeds of Mexican cacti from artificial propagation that originate elsewhere than Mexico remain unregulated by CITES.

[10] The text in the amendment column at left gives the results as amended at COP10, which adopted the clarifications and suggestions regarding taxa and hybrid specimens as analyzed by the United States—see the FEDERAL REGISTER notice of June 6, 1997 (62 FR 31054).

## Consequences of Amendments to Appendices I and II

All proposals in the preceding table that were approved by the Conference of the Parties will enter into effect 90 days after the meeting (i.e., on September 18, 1997) under the terms of the CITES treaty (except for the listing of sturgeons, which has a delayed effective date of April 1, 1998). Article XV of CITES enables any Party to exempt itself from implementing CITES for any particular species, if it enters a reservation with respect to that species. A Party desiring to enter a reservation must do so during the 90-day period immediately following the close of the meeting at which the Parties voted to include the species in Appendix I or II. If the United States should decide to enter any reservation, this action must be transmitted to the Depositary Government (Switzerland) by September 18, 1997.

The Service now repeats its request published earlier (62 FR 31054, June 6, 1997) for public comment/recommendations concerning reservations to be taken by the United States on any amendments to the Appendices adopted by the Parties at COP10. Recommendations or comments regarding reservations must be received by September 12, 1997, so that all comments can be carefully considered and the Depositary Government and the Secretariat can be informed by September 18, 1997 if appropriate. The Service proposes not to recommend any reservations. It will consider doing so only if evidence is presented to show that implementation of an amendment would be contrary to the interests or law of the United States. If the United States should enter any reservations, they will be announced in a **Federal Register** notice as soon as possible after the decisions are made. Any reservations announced would be tentative, pending full consideration of public comments.

Reservations, if entered, may do little to relieve importers in the United States from the need for foreign export permits, because the U.S. Lacey Act Amendments of 1981 (16 U.S.C. 3371 *et seq.*) make it a Federal offense to import into the United States any animals taken, possessed, transported, or sold in violation of foreign conservation laws. If a foreign country has enacted CITES as part of its positive law, and that country has not taken a reservation with regard to the animal or plant, or its parts or

derivatives, the United States (even if it had taken a reservation on a species) would continue to require CITES export documents as a condition of import. Any reservation by the United States would provide exporters in this country with little relief from the need for U.S. export documents. Importing countries that are party to CITES would generally require CITES-equivalent documentation from the United States, even if it enters a reservation, because the Parties have agreed to allow trade with non-Parties (including reserving Parties) only if they issue documents containing all the information required in CITES permits or certificates. In addition, if a reservation is taken on a species listed in Appendix I, the species should still be treated by the reserving Party as in Appendix II according to Resolution Conf. 4.25, thereby still requiring CITES documents for export. The United States has never entered a reservation to a CITES listing. It is the policy of the United States that commercial trade in Appendix I species for which a country has entered a reservation undermines the effectiveness of CITES.

**Requirements of Other Laws**

Changes in the CITES listing status of species as a consequence of actions taken at COP10 do not supersede import or export requirements pursuant to other wildlife conservation laws. For example, import or export of species listed as Threatened or Endangered under the U.S. Endangered Species Act (ESA) still must meet the provisions of that law and its implementing regulations in 50 CFR Part 17, even if those species have been transferred to a less protective CITES Appendix or removed from the Appendices entirely. The most noteworthy of the species downlisted to Appendix II at COP10 but still subject to stricter ESA provisions are the African elephant, the Argentinian and Bolivian populations of the vicuña, the wood bison, and the broad-snouted caiman. The African elephant is also subject to provisions of the U.S. African Elephant Conservation Act (AECA). Because of the high public interest in this species and the complexity of the terms of the CITES downlistings, the effects of the downlistings on trade in African elephant products is treated separately in more detail below. Species of birds included in the CITES Appendices for the first time (straw-headed bulbul, silver-eared mesia, Pekin robin, Omei Shan leiocichla, seven-colored tanager, green avadavat, Java sparrow, and hill mynah) are now subject to the terms of the U.S. Wild Bird Conservation Act (WBCA) and its regulations in 50 CFR Part 15. This will result in a prohibition on the importation of these species unless they qualify for exemptions established by regulation. Copies of these implementing regulations are available from the Service's Office of Management Authority. Importation into the United States of Sport-hunted Trophies of African Elephants from Namibia, Botswana, and Zimbabwe.

The African elephant is listed as Threatened under the ESA with a special rule at 50 CFR 17.40(e). Under the special rule, a personally taken sport-hunted trophy may be imported into the United States when it has (1) originated in a country for which the Service has received notice for that country's African elephant ivory quota for the year of export; (2) the permit requirements of the regulations for CITES permits (50 CFR 13 and 23) have been met; (3) the Service has determined that the take of the trophy for import would enhance the survival of the species; and (4) the ivory has been marked as outlined in the special rule. All these conditions will continue to apply after the Appendix II listing for the elephant populations of Botswana, Namibia, and Zimbabwe enters into effect on September 18, 1997. In making the required enhancement findings, the Service reviews the status of the population and the total management program for the elephant in each country to ensure the program is promoting the conservation of the species. The Service will make such findings on a periodic basis upon receipt of new information on the species' population or management. The enhancement findings for importation of sport-hunted elephant trophies from Botswana, Namibia, and Zimbabwe are on file in the Office of Management Authority and remain in effect until the Service finds, based on new information, that the conditions of the special rule are no longer met and has published a notice of any change in the **Federal Register**.

The practical effect of the downlistings of these three populations for sport hunters is that an import permit will no longer be required for non-commercial imports of African elephant sport-hunted trophies from these countries only. Only a CITES export permit from the country of origin or a re-export certificate from an intermediate country will be required. Populations of African elephants in all other countries, however, remain in Appendix I. Therefore, importation into the United States of sport-hunted elephant trophies from these other countries will continue to require prior issuance of both an import and export permit. As in the past, no sport trophies of African elephants, or ivory from sport trophies, whether from Appendix I or Appendix II populations, may be exported from the United States.

**Importation of Live African Elephants, Ivory, and Other African Elephant Products**

When the downlistings of the elephant populations of Botswana, Namibia, and Zimbabwe become effective on September 18, 1997, it will be possible to import live elephants from any of these countries into the United States ''to appropriate and acceptable destinations'' without an import permit and without need for an enhancement finding. Only an export permit from the country of origin, or a re-export certificate from an intermediate country, will be necessary. For elephants from Zimbabwe only, commercial trade in hides will be allowed. However, the terms of the downlisting of the Zimbabwean population are ambiguous regarding future commercial trade in leather products. The United States intends to seek clarification on the scope of the leather goods and hides annotations from the CITES Standing Committee. Hides or leather products from elephant populations other than those of Zimbabwe are still considered to be specimens included in Appendix I and cannot be imported by any CITES Party for commercial purposes.

Regardless of any provisions of the African elephant downlistings at COP10 for export of elephant ivory or ivory products, import of worked ivory into the United States continues to be prohibited under the terms of the African Elephant Conservation Act (AECA), as interpreted by the ESA 4(d) special rule, unless they meet any of the following exceptions: (1) Bonafide antiques more than 100 years old; (2) personal and household effects registered with U.S. Customs on export and now being reimported; or (3) pre-Convention items for non-commercial use acquired prior to the first listing of the elephants under CITES in 1977. With the exception of appropriately marked sport-hunted trophies, import of raw ivory is strictly prohibited.

**Note:** The Department has determined that amendments to CITES Appendices, which result from actions of the Parties to the Convention, do not require the preparation of Environmental Assessments as defined under authority of the National Environmental Policy Act (42 U.S.C. 4321–4347). This rule was not subject to Office of Management and Budget review under Executive Order 12866. Because these amendments are simply

notifications of actions taken by the CITES Parties, they are not ''rules'' as defined in 5 U.S.C. 551. Similarly, the Regulatory Flexibility Act (5 U.S.C. 601) does not apply to the CITES listing process. The proposed adjustments to the list in 50 CFR 23.23 are solely informational to provide the public with accurate data on the species covered by CITES. With the exception of the sturgeon species listed on the basis of the proposal by Germany and the United States, the listing changes adopted by the Parties will take effect on September 18, 1997, under the terms of CITES. The sturgeon listings take effect on April 1, 1998, as provided for in the amended language of the proposal. This proposed rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Service finds that the public comment period must close 15 days from publication, in order to provide the necessary time to review and, if appropriate, act on any comments requesting the entering of reservations. Any such reservations must be submitted to the Depositary Government (and CITES Secretariat) by September 18, 1997.

## List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

This document is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.* and 87 Stat. 884, as amended). It was prepared by Dr. Marshall A. Howe and Dr. Bruce MacBryde, Office of Scientific Authority.

## Proposed Regulation Promulgation

The Service proposes to amend the list of species contained in § 23.23 of title 50 of the Code of Federal Regulations by incorporating all changes in CITES Appendices I and II that were approved by the Conference of the Parties, as set forth in the Supplementary Information section of this proposed rule.

Dated: August 15, 1997.

**Donald J. Barry,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 97–22402 Filed 8–21–97; 8:45 am]

BILLING CODE 4310–55–U

# Notices

Federal Register
Vol. 62, No. 163
Friday, August 22, 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

### Forest Service

### Mount Snow Ski Area Snowmaking Water Source Alterations, Green Mountain National Forest, Windham County, VT

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare environmental impact statement.

**SUMMARY:** The USDA, Forest Service, will prepare an environmental impact statement (EIS) for Mount Snow's proposal to upgrade its existing snowmaking system to insure more reliable and consistent snow surfaces throughout the ski season regardless of weather conditions. Existing snowmaking water withdrawals, storage facilities and on-mountain pipelines will be modified, a new water source(s) and storage facility(ies) will be designed into the system. An indirect benefit from this proposal will be to retrofit the existing system and design the new facilities so as to reduce adverse impacts on fisheries, water quality and aquatic biota which currently exist. Based upon preliminary information from a snowmaking needs and alternatives study, conducted pursuant to Vermont Water Quality Regulations, Somerset Reservoir, Harriman Reservoir and the Howe Farm have been identified in addition to eight other possible sites as potentially viable candidates for new water sources and/or storage facilities. Presently, the Mount Snow snowmaking system utilizes three artificial ponds for water storage: Snow Lake, fed by the North Branch of the Deerfield River, and Carinthia Pond, fed by an unnamed tributary to the North Branch of the Deerfield River, are both in-stream impoundments. Mirror Lake at Haystack Ski Area, fed by Cold Brook, is an off-stream impoundment. All water sources are approved and operate under Vermont Act 250 permits or State of Vermont Water Quality Regulations, but are not consistent with current guidelines for winter conservation flows. The goal of the proposed action is to design an approach for withdrawing water from a new source, and/or to create new storage capacity, thereby allowing the current withdrawals to be brought up to present flow guidelines, and enabling Mount Snow to take Snow Lake and Carinthia Pond off-stream. This would have significant beneficial impacts to fisheries, water quality, and aquatic biota on the North Branch of the Deerfield River. The combined water available from the new source and the existing modified sources must enable Mount Snow to increase snowmaking production from the current coverage of 83% to 100% of the existing ski trail network.

Mount Snow has been operating under a Special Use Permit from the USDA Forest Service since it opened for business in 1956. Presently, alpine skiing/snowboarding and other four season resort activities are provided to the public through a permit issued by the United States Forest Service and administered through the Green Mountain National Forest. The current forty term permit was issued on December 29, 1989. In 1995, Mount Snow, Ltd. acquired the nearby Haystack Ski Area and constructed a pipeline connecting the two snowmaking systems.

**DATES:** Comments concerning the scope of the analysis must be received by October 13, 1997.

**ADDRESSES:** Submit written comments and suggestions concerning the scope of the analysis to Beth LeClair, District Ranger, Green Mountain National Forest, RR #2, Box 35, Rochester, Vermont 05767.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding the proposed action and environmental impact statement to Nancy Burt, Project Coordinator, Green Mountain National Forest, 231 N. Main Street, Rutland, Vermont 05701, phone: 802–747–6700.

**SUPPLEMENTARY INFORMATION:**

#### Purpose and Need

Mount Snow/Haystack ski area has a combined ski trail network of 635 skiable acres of which 527 acres (83% of total) are currently served by snowmaking. As currently configured, the combined snowmaking system at Mount Snow/Haystack ski area has a storage capacity of approximately 22 million gallons and utilizes a total seasonal water volume of about 300 million gallons. This existing system is not adequate to provide snowmaking coverage on the 527 acres of ski trails currently serviced. The snowmaking system cannot meet target dates for initial trail opening, does not provide sufficient depth of snow coverage and cannot recover rapidly following thaw and melt-off events. Natural snowfall is inconsistent and often inadequate during a typical Vermont winter. Predictable snow coverage is needed if Mount Snow is to consistently provide quality winter sports recreation opportunities, be attractive to skiers/snowboarders and remain competitive with other major ski areas in New England.

Additionally, with significantly improved and upgraded snowmaking capacities at competing resorts in recent years, Mount Snow has been unable to compete effectively during periods of insufficient natural snowfall. Upgrading capacities would promote repeat visitation and continue the long-term viability of the ski area and Deerfield Valley businesses. Unless Mount Snow remains viable, the economic health of the region could be adversely affected. The financial success of the resort has a substantial bearing on the continued ability of USDA Forest Service and Mount Snow to provide quality winter sports recreation to the public as called for in the Forest Plan and Mount Snow's Special Use Permit.

Development of a new water withdrawal system would be designed to result in current withdrawals being brought up to present flow guidelines. This would enable Mount Snow to take Snow Lake and Carinthia Pond off-stream, thereby having significant beneficial impacts to fisheries, water quality, and aquatic biota on the North branch of the Deerfield River.

#### The Proposed Action

The proposed action is (1) to identify and develop new water sources and/or storage options and pump water for snowmaking through a buried pipeline to the Mount Snow system, (2) to upgrade existing water withdrawal and storage facilities to bring them into compliance with current state and

federal regulatory guidelines, and (3) to install air and water pipelines on existing ski terrain to increase snowmaking coverage from 527 to 635 acres. No new ski terrain is proposed.

**Management Direction**

The proposed action is consistent with the long-range goals for this area as defined in the Land and Resource Management Plan for the Green Mountain National Forest. That Forest Plan was approved on January 15, 1987. Under that Forest Plan, the area encompassed by the Mount Snow Ski Area is assigned to management under prescription 7.1A. This management prescription emphasizes highly developed recreation, including downhill ski areas. The purpose of prescription 7.1A is to provide opportunities for recreation requiring highly developed structures and facilities, maintain a visually appealing landscape, and manage for other resource uses in a compatible way. The Forest Service does not anticipate the need for any amendments to the Land and Resource Management Plan as a result of this snowmaking proposal since all new snowmaking will be located within the boundary of the existing SUP or on private land.

The Forest Service will consider a range of alternatives to meet the objectives of this proposal. One of these will be the ''no action'' alternative, in which none of the proposed activities would be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values. Proposed alternatives have been determined by the proponent based on a preliminary Snowmaking Water Supply Needs and Alternatives Analysis, which is currently being finalized, in which twelve water sources have been studied. Various screening factors were analyzed including water availability, on-site development costs, pond volume, and environmental impacts.

The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on both private and National Forest lands will be considered. The EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

Public participation is an important part of the analysis, commencing with the initial scoping process (40 CFR 1501.7), which will occur upon publication of this notification. In addition, the public is encouraged to visit with Forest Service officials at any time 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 organizations who may be interested in or affected by the proposed action. The proposed project will be presented at an Open House in the local area, where representatives from the Green Mountain National Forest will be available to discuss the proposed project and provide additional information.

Comments from the public and other agencies will be used in preparation of the Draft EIS. Please note that comments will be regarded as public information. 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, such as the Green Mountain Forest Plan EIS.
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects).
6. Determine potential cooperating agencies and task assignments.

Preliminary issues identified to date include:

- Is the project consistent with the Deerfield River Settlement?
- Potential effects of increased snow deposition on stream runoff.
- Potential effects on aquatic habitat.
- Potential effects on Mount Snow's ability to compete in the marketplace.

Other issues commonly associated with ski area development include: effects on cultural resources, water quality, soils, sensitive species, and scenery values. This list may be verified, expanded, or modified based on public scoping for this proposal.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in March, 1998. At that time, the EPA will publish a notice of availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in management of the Mount Snow Ski Area participate at that time. To be most helpful, comments on the Draft EIS should be as site-specific as possible. The Final EIS is scheduled to be completed by June 1998.

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 US 519.553 (1978).* Also, environmental objections that could be raised at the draft environmental impact stage but that are not raised until after completion of the final environmental impact 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 objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in developing issues and alternatives.

To assist the Forest Service in identifying and considering issues on the proposed action, comments should be as specific as possible. 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.

Dated: August 14, 1997.

**James W. Bartelme,**

*Forest Supervisor.*

[FR Doc. 97–22388 Filed 8–21–97; 8:45 am]

BILLING CODE 3410–11–M

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from procurement list

**SUMMARY:** The Committee has received proposals to add to the procurement list services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete services previously furnished by such agencies.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** September 22, 1997.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

## Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Janitorial/Custodial
West Los Angeles USARC
Los Angeles, California
NPA: Lincoln Training Center & Rehabilitation Workshop, South El Monte, California

Laundry Service
Puget Sound Health Care System
Veterans Administration Medical Center
American Lake/Seattle, Washington
NPA: Northwest Center for the Retarded, Seattle, Washington

## Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action does not appear to have a severe economic impact on future contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

The following services have been proposed for deletion from the Procurement List:

Commissary Shelf Stocking, Naval Air Station, Alameda, California
Commissary Shelf Stocking, Naval Air Station, Long Beach, California
Commissary Shelf Stocking & Custodial, Naval Station, Treasure Island, California
Administrative Services, Federal Supply Service, Tool Acquisition Division I, Arlington, Virginia
Food Service, White Sands Missile Range, Consolidated Dining Facility, White Sands, New Mexico
Janitorial/Custodial, Social Security Administration, 4377 Mission Street, San Francisco, California
Janitorial/Custodial, Weather Bureau Building 2400 M Street, NW, Washington, DC
Janitorial/Custodial, Naval Air Warfare Center, Aircraft Division, 6000 E. 21st Street, Indianapolis, Indiana
Janitorial/Custodial, Nuclear Regulatory Commission Warehouse, 5000–5010 Boiling Brook Parkway, Rockville, Maryland
Janitorial/Custodial, Federal Building, 35 Ryerson Street, Brooklyn, New York
Janitorial/Custodial, U.S. Army Reserve Center, Huntingdon, Pennsylvania
Janitorial/Custodial, U.S. Army Reserve Center, Moore Hall, Salt Lake City, Utah
Photocopying, National Agricultural Library Building, Beltsville, Maryland
Repair & Maintenance of Electric Typewriters, General Services Administration, Syracuse, New York.

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 97–22339 Filed 8–21–97; 8:45 am]

BILLING CODE 6353–01–P

# COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

## Procurement List; Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to the procurement list.

**SUMMARY:** This action adds to the procurement list commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** September 22, 1997.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** On March 28, June 20, 27 and July 7, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 F.R. 14883, 33585, 34686 and 36256) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

**Commodities**

Office and Miscellaneous Supplies
(Requirements for the Redstone Arsenal Support Activity, Alabama)

Office and Miscellaneous Supplies
(Requirements for the Anniston Army Depot, Alabama)

Office and Miscellaneous Supplies
(Requirements for the Seymour-Johnson Air Force Base, North Carolina)

Business Cards
7510–00–NIB–0240 (250 per box)
7510–00–NIB–0265 (500 per box)
7510–00–NIB–0266 (1000 per box)

Dropcloth
8340–01–444–3652
8340–01–444–3653

**Services**

Commissary Shelf Stocking & Custodial
Redstone Arsenal
Huntsville, Alabama

Food Service
Randolph Air Force Base, Texas

Mailroom Operation
for the following Washington, DC locations:
U.S. Department of Transportation Headquarters
Nassif Building, 400 Seventh Street, SW

Federal Aviation Administration
Buildings FOB 10A & 10B, 800 Independence Avenue, SW

U.S. Coast Guard Headquarters
Transpoint Building, 2100 2nd Street, SW

Switchboard Operation
Department of Veterans' Affairs Medical Center
800 Zorn Avenue
Louisville, Kentucky

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 97–22340 Filed 8–21–97; 8:45 am]

BILLING CODE 6353–01–P

## DEPARTMENT OF COMMERCE

### Bureau of the Census

**[Docket No. 970728183–7183–01]**

### Census Designated Place (CDP) Program for Census 2000—Final Criteria

**AGENCY:** Bureau of the Census, Commerce.

**ACTION:** Notice of final program.

**SUMMARY:** Census designated places (CDPs) are statistical geographic entities, defined for each decennial census, consisting of a closely settled, locally recognized concentration of population that is identified by name. The Census Bureau uses CDPs to tabulate and publish data for localities that otherwise would not be identified as places in the decennial census data products.

Although not as numerous as incorporated places, CDPs have been important geographic entities since the Census Bureau first introduced them for the 1950 census. In 1990, more than 29 million people in the United States lived in CDPs. To determine the inventory of CDPs, the Census Bureau offers a program to local participants, such as American Indian tribal officials and locally identified agencies, whereby they can review and update the geographic definition of CDPs defined during the previous census and suggest new CDPs according to criteria developed and promulgated by the Census Bureau. The Census Bureau then reviews the resulting CDP delineations for conformance to these criteria. The Census Bureau does not take into account nor attempt to anticipate any nonstatistical uses that may be made of CDPs, nor will the Census Bureau modify the definition of CDPs to meet the requirements of any nonstatistical program.

The Census Bureau is publishing final criteria for the delineation of CDPs for Census 2000. These criteria will apply to the 50 states, American Indian and Alaska Native areas, Puerto Rico, and all other Island Areas in Census 2000 except American Samoa.[1] The Census Bureau may modify, or, if necessary, reject any CDP that does not meet the criteria announced in this notice. The Census Bureau also may define CDPs in instances where clear evidence of a place exists, but for which local officials did not submit boundaries.

In addition to the criteria, this notice includes a description of the changes from the previous criteria and a list of definitions of key terms used in the criteria.

**EFFECTIVE DATE:** The CDP criteria for Census 2000 become effective September 22, 1997.

**FOR FURTHER INFORMATION CONTACT:** Dr. Joel Morrison, Chief, Geography Division, Bureau of the Census, Washington, DC 20233–7400, telephone (301) 457–1132, or e-mail (jmorrison@geo.census.gov).

**SUPPLEMENTARY INFORMATION:** The CDP delineation criteria have evolved over the decades in response to census practices and the preferences of data users. After each decennial census, the Census Bureau, in consultation with data users, reviews and revises these criteria. Then, before the next decennial census, the Census Bureau offers state, tribal, and local officials an opportunity to correct, update, and otherwise improve the universe of CDPs.

In July and August 1995, the Census Bureau issued invitations to local groups and agencies to participate in the delineation of statistical geographic entities for Census 2000. These included regional planning agencies, councils of governments, county planning agencies, officials of American Indian tribes, and officials of the 12 nonprofit Alaska Native Regional Corporations.

By early 1998, the Census Bureau will provide program participants with maps and detailed guidelines for delineating CDPs for Census 2000.

**Response To Comments**

The Census Bureau issued a Notice of Proposed Program and Request for Comments in the **Federal Register** (61 FR 29524) on Tuesday, June 11, 1996. That notice solicited comments on the proposed criteria changes for delineating CDPs for Census 2000. The Census Bureau received comments from eight individuals, including academic geographers; representatives of governmental agencies at the Federal, state, and local levels; a private consultant; and a representative of a public interest group. All comments pertained to the minimum population threshold for qualification as a CDP. Specific recommendations for minimum thresholds varied from 100 to 500 residents, but all agreed that the proposed minimum threshold of 1,000 residents for CDPs located outside urbanized areas (UAs) was too high for most rural communities to qualify for recognition.

Upon further analysis, the Census Bureau determined that it could no longer conceptually support the maintenance of specific population thresholds for CDP qualification and, accordingly, has eliminated population as a criterion for qualification. This change will enhance the Census Bureau's ability to provide data relating to a wide variety of unincorporated places, especially in small rural communities, throughout the United States, about which previous censuses are mute.

[1] There are no CDPs in American Samoa because incorporated villages cover its entire territory and population.

**Classification**

This notice was determined to be not significant for purposes of Executive Order 12866.

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, certified to the Chief Counsel, Small Business Administration, that this notice will not have a significant economic impact on a substantial number of small entities. The notice sets forth the criteria for the delineation of Census Designated Places (CDPs). The criteria will be used to determine geographic boundaries for collecting data for Census 2000. The Census Bureau uses CDPs to tabulate and publish data for localities that otherwise would not be identified as places in the decennial census data products. Thus, because the delineation of CDPs is solely for statistical purposes to enable the Census Bureau to tabulate and publish data for Census 2000, it will not have a significant economic impact on a substantial number of small entities.

**Final Program Requirements**

*A. Criteria for Delineating CDPs for Census 2000*

The Census Bureau announces the following criteria for use in determining the areas which will qualify for designation as CDPs for Census 2000.

1. General Characteristics

The purpose of the CDP program is to identify and delineate boundaries for closely settled, named, unincorporated communities that generally contain a mixture of residential, commercial, and retail areas similar to those found in incorporated places of similar sizes. Although the Census Bureau realizes that places of all sizes and levels of functionality exist throughout the United States, it is not the intent of the CDP program to identify apartment complexes and residential subdivisions in densely settled areas or small crossroads in rural areas. The ideal CDP will differ from an incorporated city, town, village, or borough only in regard to legal status and recognition within its respective state. Each CDP will contain an identifiable core area. For the purposes of the CDP criteria, the term ''core area'' is defined as the area that is associated strongly with the CDP name and contains the majority of the CDP's population and housing as well as commercial structures and economic activity.

In rural areas, the core may be a crossroads around which are found a cluster of houses, commercial structures, and perhaps a post office that provide the place identity for the surrounding countryside. In more urban areas, the core may be a larger area consisting of a mixture of residential and commercial structures focused on a particular point or extending along transportation corridors. We ask that participants in the CDP program consider the level of influence that the community has on surrounding areas; the relationship with, and possible existence within, a larger named place; and the relative importance within the county, town, or township.

2. Names

A CDP must have a locally recognized name. A CDP name, however, may not duplicate the name of an adjacent or nearby incorporated place. It is permissible to change the name of a 1990 CDP if the new name provides a better identification of the community.

3. Geographic Relationships

a. A CDP may not be located in more than one state or state equivalent, nor may a CDP cross the boundaries of an American Indian reservation (AIR), trust land, or a tribal jurisdiction statistical area (TJSA). A CDP may be located in more than one county.

b. A CDP may not be located partially or entirely within an incorporated place or another CDP.

c. A CDP may not be coextensive with an Alaska Native village statistical area (ANVSA). A CDP and an ANVSA, however, may overlap territory provided that the two entities are distinguishable by name.

d. A CDP may not be coextensive with any higher-level geographic area recognized by the Census Bureau, such as county subdivisions, counties, AIRs, TJSAs, and states. Exceptions will be made for Arlington County, VA, as well as areas such as, but not limited to, towns in the New England states, New York, and Wisconsin and townships in Michigan, Minnesota, Pennsylvania, and New Jersey that generally are perceived of as places, tend to provide municipal-style services, and exhibit urban-type population density patterns over much, if not all, of the land area of the entity.

e. The Census Bureau will not accept plans that delineate ''wall-to-wall'' CDPs within a county. That is, CDPs may not cover all or most of the land area within a county.

4. Boundaries

a. A CDP encompasses, as far as possible, all the surrounding, closely settled territory associated with the place name. A CDP must comprise a reasonably compact and continuous land area internally accessible to all points by road; the only exceptions are:

- Where parts of a CDP are separated by a narrow corridor of incorporated territory.
- Where the topography or geographic patterns of settlement are not compact, but are irregularly shaped. Two parts of a CDP, however, may not be separated by a body of water over which there are no bridges or ferry connections, with the exception of small islands located in a lake or river within or adjacent to the main body of the CDP.

b. The boundaries of a CDP always are census block boundaries. Features chosen to form CDP boundaries must be the nearest acceptable features bounding the core area of the CDP (as defined in Section A.1. above). CDP boundaries should follow visible, perennial natural and cultural features such as roads, rivers, canals, railroads, above-ground high-tension power lines, and so forth. In addition to these features, the following also are acceptable as CDP boundaries:

- All incorporated place boundaries.
- All minor civil division (MCD) boundaries (generally towns and townships) in Connecticut, Indiana, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.
- Some MCD boundaries in Illinois (townships only, not election precincts), Iowa, Kansas, Michigan, Minnesota, Missouri (governmental townships only), Nebraska (townships only, not election precincts), North Dakota, Ohio, South Dakota, and Wisconsin.
- Barrio, barrio-pueblo, and subbarrio boundaries in Puerto Rico, census subdistrict boundaries in the Virgin Islands, municipal district boundaries in the Northern Mariana Islands, and election district boundaries in Guam.
- AIR and trust land boundaries.
- ANVSA and Alaska Native Regional Corporation boundaries (at the discretion of the Census Bureau insofar as such boundaries are unambiguous for allocating living quarters as part of census activities).

When features listed above are not available for selection, the Census Bureau, at its discretion, may approve other nonstandard visible features, such as ridge lines, pipelines, intermittent streams, fence lines, and so forth. Additionally, the Census Bureau may accept, on a case-by-case basis, the boundaries of selected nonstandard and potentially nonvisible features, such as the boundaries of National Parks and Forests, military reservations, cemeteries, or other special land-use properties and the straight-line

extensions of visible features or other lines of sight.

5. Population Size

There are no minimum or maximum population thresholds for recognition as a CDP for Census 2000.

6. Census Bureau Review and Qualification of CDPs

The Census Bureau may modify or, if necessary, reject any proposed CDP that does not comply with the general characteristics as outlined in Section A.1. above or with any other criteria as contained in this notice. The Census Bureau also may define CDPs in instances where clear evidence of a place exists, but for which local officials did not submit boundaries. The Census Bureau does not take into account nor attempt to anticipate any nonstatistical uses that may be made of CDPs, nor will the Census Bureau modify the definition of CDPs to meet the requirements of any nonstatistical program.

*B. Changes in the Criteria for Census 2000*

1. The Census Bureau has eliminated population size as a criterion for CDP qualification. For Census 2000, the Census Bureau will recognize any unincorporated community as a CDP, regardless of population size, provided it meets other criteria as outlined in this notice. This represents a significant change in the CDP criteria. Data users should consider the implications that this change has on the reliability of sample data reported for CDPs, especially those with small populations.

2. The Census Bureau will simplify its data presentations by eliminating any CDPs that are geographically coextensive with an ANVSA having the same name. This will eliminate duplicate place names and population totals that refer to the same geographic area. In 1990, 64 out of 217 ANVSAs were coextensive with a CDP. These ANVSAs can still maintain their status for Census 2000, but not also as CDPs. The Census Bureau will continue to recognize as separate CDPs those communities that overlap the boundaries of ANVSAs, provided that the two entities are distinguishable by name.

*C. Reliability and Confidentiality of Sample Data for CDPs*

Statistical Areas Program participants responsible for delineating CDP boundaries, as well as users of Census 2000 data, should be aware that data reported for CDPs with small population and housing unit totals are subject to disclosure avoidance techniques designed to maintain confidentiality of individual responses. In the past, minimum population thresholds for most CDPs were high enough to provide reasonably reliable data for the CDP. With the elimination of population thresholds as a criterion for recognition, program participants and data users must recognize that the population and housing characteristics reported for small CDPs may be affected to a greater extent by disclosure avoidance techniques and increased variability compared to larger CDPs.

The potential pitfalls of very small (<1000 people) CDPs include:

1. Title 13, United States Code, requires the Census Bureau to ensure the confidentiality of all individual responses. The Census Bureau will apply a confidentiality edit to meet this legal mandate. A small amount of uncertainty is added to the estimates of demographic characteristics as a result. Small populations require more protection, so there will likely be more uncertainty added to the census data. (The edit maintains the basic demographic structure of the data.)

2. Sample data are subject to variability within geographic areas of any population size, but greater variability occurs with smaller populations. This is because the number of sample cases is smaller.

3. If a small CDP is formed and the characteristics of the housing or demographics are homogeneous, the estimates may be fairly reliable. To the extent that characteristics vary from house to house or person to person, the data reliability is diminished.

*D. Relationship Between CDPs and the Urban/Rural Classification*

For previous censuses, the Census Bureau classified as urban any CDP included within a UA as well as any CDP that contained 2,500 or more residents and was located outside of a UA. As a result, some CDPs (as well as some incorporated places) that had very low population densities were classified as urban simply because their boundaries encompassed at least 2,500 people. The Census Bureau's urban/rural classification contains criteria for defining ''extended cities''—incorporated places that are divided into sparsely settled (defined as fewer than 100 people per square mile) rural portions and more densely settled urban portions. No such provisions, however, existed for CDPs that contained extensive areas of sparse settlement.

The Census Bureau currently is reviewing its urban/rural classification for Census 2000. The definitions and criteria used for the 1990 census are subject to change, although at this time no decisions have been reached regarding urban/rural definitions and criteria for Census 2000. Statistical Areas Program participants defining CDPs should be aware, however, of the possibility that the Census Bureau may adopt urban/rural criteria under which all incorporated places and CDPs could be divided between densely settled (urban) portions and sparsely settled (rural) portions. There is no guarantee at this time that all land area included in a CDP for Census 2000 will be classified as urban (or rural) by the Census Bureau.

*E. Data Access and Dissemination System*

The Census Bureau is developing the Data Access and Dissemination System (DADS) as a part of its efforts to facilitate access to and dissemination of official demographic and economic information. This interactive electronic system will be designed to allow timely access to data generated by the various areas of the Census Bureau. Users of the DADS will be able to view or download predefined data products or to extract and tabulate data from existing databases. The DADS also will provide the opportunity for data users to view and map features contained within the Census Bureau's TIGER database.

The DADS will enable users to select unique user-defined geographic areas from an on-screen map image by drawing polygons or circles or selecting predefined census areas such as census blocks, block groups, or census tracts. Users will be able to define as well as tabulate and download data for a variety of geographic areas, provided the selections conform to Title 13 requirements protecting the confidentiality of individual responses (see Section C. above). User-defined selections may consist of (but are not limited to) geographic areas, such as neighborhoods, housing subdivisions, soil conservation districts, special taxation districts, central business districts, and so forth, that are not part of the Census Bureau's standard geographic hierarchy.

The DADS will offer flexibility in defining these geographic areas interactively by allowing data users to choose and modify boundaries for unincorporated places as desired, rather than having to conform to a predefined census geographic area. The Census Bureau recommends the use of this user-defined functionality within DADS to create geographic entities, such as neighborhoods, or to obtain census data for housing subdivisions. Many planned communities have component parts

known locally by name for which data users need census data. The Census Bureau has developed the DADS to fulfill this need, allowing the CDP program to continue to recognize the larger unincorporated community.

**Definitions of Key Terms**

*Alaska Native village statistical area (ANVSA)*—The densely settled extent of an Alaska Native village (ANV). The ANV is a type of local governmental unit that constitutes an association, band, clan, community, tribe, or village recognized pursuant to the Alaska Native Claims Settlement Act of 1972.

*American Indian reservation (AIR)*—An American Indian entity with boundaries established by treaty, statute, and/or executive or court order and over which American Indians have governmental jurisdiction. Designations such as colonies, communities, pueblos, rancherias, reservations, and reserves apply to AIRs.

*Census block*—A small area bounded by visible features such as streets, roads, streams, and railroad tracks and by nonvisible boundaries such as city, town, township, and county limits, property lines, and short, imaginary extensions of streets and roads.

*Coextensive*—Descriptive of two or more geographic entities that cover exactly the same area, with all boundaries conjoint.

*Housing unit*—A housing unit is a house, an apartment, a mobile home or trailer, a group of rooms, or a single room occupied as a separate living quarter or, if vacant, intended for occupancy as a separate living quarter. Separate living quarters are those in which the occupants live separately from any other individuals in the building and which have direct access from outside the building or through a common hall. For vacant units, the criteria of separateness and direct access are applied to the intended occupants whenever possible. If that information cannot be obtained, the criteria are applied to the previous occupants.

*Incorporated place*—A type of governmental unit, incorporated under state law as a city, town (except in New England, New York, and Wisconsin), borough (except in Alaska and New York), or village, having legally prescribed limits, powers, and functions.

*Island area*—An entity, other than a state or the District of Columbia, under the jurisdiction of the United States. For Census 2000, this will include American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and several small islands in the Caribbean Sea and the Pacific Ocean. The Census Bureau treats each Island Area as the statistical equivalent of a state.

*Minor civil division (MCD)*—The primary governmental or administrative division of a county in 28 states, Puerto Rico and the Island Areas having legal boundaries, names, and descriptions. The several types of MCDs are identified by a variety of terms, such as town, township, and district, and include both functioning and nonfunctioning governmental units. In some states, some or all of the incorporated places also constitute MCDs.

*Nonvisible feature*—A map feature that is not visible, such as a city or county boundary, a property line running through space, a short imaginary extension of a street or road, or a point-to-point line.

*Statistical geographic entity*—Any specially defined geographic entity or combination of entities, such as a block group, CDP, or census tract, for which the Census Bureau tabulates data. Statistical entity boundaries are not legally defined and the entities have no governmental standing.

*Tribal jurisdiction statistical area (TJSA)*—A statistical entity delineated for the decennial census by American Indian tribal officials in Oklahoma. A TJSA encompasses the area that includes the American Indian population over which a tribe has jurisdiction.

*Urbanized area (UA)*—An area consisting of a central place(s) and adjacent urban fringe that together have a minimum residential population of at least 50,000 people and generally an overall population density of at least 1,000 persons per square mile. The Census Bureau uses published criteria to determine the qualification and boundaries of UAs at the time of each decennial census or from the results of a special census during the intercensal period.

*Visible feature*—A map feature that can be seen on the ground, such as a street or road, railroad track, power line, stream, shoreline, fence, ridge, or cliff.

Dated: August 1, 1997.

**Martha Farnsworth Riche,**

*Director, Bureau of the Census.*

[FR Doc. 97–22332 Filed 8–21–97; 8:45 am]

BILLING CODE 3510–07–P

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Docket 65–97]**

## Foreign-Trade Zone 29—Louisville, Kentucky; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Louisville and Jefferson County Riverport Authority, grantee of Foreign-Trade Zone 29, requesting authority to expand FTZ 29, Louisville, Kentucky, within the Louisville Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 12, 1997.

FTZ 29 was approved on May 26, 1977 (Board Order 118, 42 FR 29323, 6/8/77), and expanded on January 31, 1989 (Board Order 429, 54 FR 5992, 2/7/89). The zone project currently consists of two sites in the Louisville, Kentucky area: *Site 1* (1,319 acres)—located within the Riverport Industrial Complex; and *Site 2* (675 acres)—located at the junction of Gene Snyder Freeway and La Grange Road in eastern Jefferson County. In addition, an application is currently pending with the Board for three additional sites in Louisville (Docket 71–96; 61 FR 52909, 10/9/96).

The applicant is now requesting authority to add yet another site: Proposed *Site 6* (205 acres)—along Johnstown Road. The site is adjacent to the Riverport Industrial Complex (Site 1), and is also owned by the applicant. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 21, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 5, 1997).

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 601 W. Broadway, Room 634B, Louisville, Kentucky 40202

Office of the Executive Secretary, Foreign-Trade Zone Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, N.W., Washington, DC 20230.

Dated: August 14, 1997.

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 97–22272 Filed 8–21–97; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 64–97]**

### Foreign-Trade Zone 124—Gramercy, LA, Application for Subzone Status, Bollinger Shipyards, Inc. (Shipbuilding)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Louisiana Port Commission, grantee of FTZ 124, requesting special-purpose subzone status for the shipbuilding facility of Bollinger Shipyards, Inc. (BSI), located in Lockport, Louisiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 11, 1997.

The BSI shipyard (250 acres, 334,000 sq.ft., 560 employees) is located at 8365 State Highway 308, Lockport (LaFourche Parish), Louisiana, and is used in the construction, repair, and conversion of commercial and military vessels for domestic and international customers. Foreign components used at the BSI shipyard (up to 30% of total) include propulsion units, engines and parts, gears, pumps, pulleys, compressors and parts, measuring instruments (duty rate range: free—6%, *ad valorem*).

FTZ procedures would exempt BSI from Customs duty payments on the foreign components used in export activity. On its domestic sales, the company would be able to choose the duty rate that applies to finished oceangoing vessels (duty free) for the foreign-origin components noted above. The manufacturing activity conducted under FTZ procedures would be subject to the ''standard shipyard restriction'' applicable to foreign-origin steel mill products (e.g., pipe and plate), which requires that full duties be paid on such items. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 21, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 5, 1997).

A copy of the application will be available for public inspection at the following locations:

Office of the Port Director, U.S. Customs Service, P.O. Box 490, 110 North Airline Avenue, Gramercy, LA 70052

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: August 12, 1997.

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 97–22271 Filed 8–21–97; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 21–97]**

### Proposed Foreign-Trade Zone; Piedmont Triad Area, North Carolina; (Guilford, Forsyth, Davidson and Surry Counties, North Carolina); Amendment of Application

Notice is hereby given that the application of the Piedmont Triad Partnership, requesting authority to establish a general-purpose foreign-trade zone at sites in Guilford, Forsyth, Davidson and Surry Counties, North Carolina (Doc. 21–97, 62 FR 15460, 4/1/97), has been amended to include two additional parcels within Proposed Site 3 (47 acres), High Point, North Carolina:

—''Parsons'' parcel (110 acres)—3301–3334 Kivett Drive, High Point

—Kivett Drive Industrial Park parcel (110 acres)—Kivett Drive and I–85, High Point (adjacent to the 47-acre parcel initially proposed as Site 3)

As amended, Proposed Site 3 would cover 3 parcels (267 acres) within the East High Point I–85/I–74 Industrial Corridor, High Point, North Carolina. The application otherwise remains unchanged.

The comment period is reopened until October 6, 1997. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below.

A copy of the application and the amendment and accompanying exhibits are available for public inspection at each of the following locations:

Office of the Piedmont Triad Partnership, 6518 Airport Parkway, Suite 100, Greensboro, NC 27409

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania, Washington, DC 20230.

Dated: August 15, 1997.

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 97–22274 Filed 8–21–97; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[DOCKET 66–97]**

### Foreign-Trade Zone 168—Dallas-Ft. Worth, Texas; Application for Foreign-Trade Subzone Status, Ultrak, Inc.; (Closed Circuit Television Systems) Lewisville, Texas

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Dallas/Fort Worth Maquila Trade Development Corporation, grantee of FTZ 168, requesting special-purpose subzone status for the closed circuit television system assembly facility of Ultrak, Inc., located in Lewisville, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 15, 1997.

Ultrak's facility (14 acres, 150,000 sq. ft.) is located at 1301 Water's Ridge, Lewisville (Denton County), Texas, some 20 miles north of Dallas. The facility (125 employees) will be used to assemble and package closed circuit television (CCTV) systems and accessories, which are used primarily for security and observation. (Currently, the foreign-sourced components are classified as ''kits'' under the Customs entireties provision and are subject to the 5 percent monitor rate.) The CCTV systems can include the following

components: cameras, monitors, time lapse video recorders, compact disc players, turntables, power supplies, camera housings of steel and aluminum, mounting equipment, positioning devices and controls, panic and hold up buttons, shock sensors, multiplexers, switches, processors, flex tubes, junction boxes, cable and packaging. Some 90 percent of the components are sourced abroad. Some 5–7 percent of the finished products are exported.

Zone procedures would exempt Ultrak from Customs duty payments on foreign materials used in production for export. On domestic shipments, the company would be able to defer duty on the foreign-sourced components (duty-rates ranging between 1–5%). Foreign merchandise would also be exempt from state and local ad valorem taxes. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 21, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 5, 1997).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 2050 N. Stemmons Fwy., Suite 170, P.O. Box 420069, Dallas, Texas 75207

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: August 18, 1997.

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 97–22273 Filed 8–21–97; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–475–818]**

### Certain Pasta From Italy: Initiation of New Shipper Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (''the Department'') has received a request to conduct a new shipper administrative review of the antidumping duty order on certain pasta from Italy. In accordance with 19 CFR 353.22(h), we are initiating this administrative review.

**EFFECTIVE DATE:** August 22, 1997.

**FOR FURTHER INFORMATION CONTACT:** John Brinkmann or Sunkyu Kim, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–5288 or 482–2613, respectively.

### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Section 353, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

**SUPPLEMENTARY INFORMATION:**

### Background

The Department has received a request, pursuant to section 751(a)(2)(B) of the Act, and in accordance with 19 CFR 353.22(h), for a new shipper review of the antidumping duty order on certain pasta from Italy, which has a July anniversary date.

### Initiation of Review

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 353.22(h)(6), we are initiating a new shipper review of the antidumping duty order on certain pasta from Italy. We intend to issue the final results of review not later than 270 days from the date of publication of this notice.

| Antidumping duty proceeding | Period to be reviewed |
|---|---|
| Italy: Certain Pasta, A–475–818: | |
| Amabile S.R.L ..... | 07/01/96–6/30/97 |

We will instruct the U.S. Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the company listed above, in accordance with 19 CFR 353.22(h)(4).

Interested parties may submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b).

This initiation and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 353.22(h).

Dated: August 15, 1997.

**Richard W. Moreland,**

*Acting Deputy Assistant Secretary, Import Administration.*

[FR Doc. 97–22268 Filed 8–21–97; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–028]**

### Roller Chain, Other Than Bicycle, From Japan: Postponement of Preliminary and Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Extension of time limits for preliminary and final results of antidumping duty administrative review.

**SUMMARY:** The Department of Commerce (the Department) is extending the time limits of the preliminary and final results of the antidumping duty administrative review of the antidumping finding on roller chain, other than bicycle, from Japan, covering the period April 1, 1996, through March 31, 1997, since it is not practicable to complete the review within the time limits mandated by the Tariff Act of 1930 (the Act), as amended, (19 U.S.C. 1675(a)(3)(A)).

**EFFECTIVE DATE:** August 22, 1997.

**FOR FURTHER INFORMATION CONTACT:** Jack Dulberger or Ron Trentham, Antidumping Duty and Countervailing Duty Enforcement Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue, N.W., Washington, DC 20230; telephone (202) 482–5505 and 482–4793.

**SUPPLEMENTARY INFORMATION:**

## Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act.

## Background

On May 13, 1997 (62 FR 27720, May 21, 1997) the Department initiated an administrative review of the antidumping duty order on roller chain, other than bicycle, from Japan, covering the period April 1, 1996, through March 31, 1997. In our notice of initiation, we stated that we intended to issue the final results of this review no later than April 30, 1998. On August 1, 1997, the American Chain Association (ACA), submitted a request for postponement of the preliminary determination on roller chain, other than bicycle from Japan, due to the large number of respondents and the complexity of issues presented by the review.

## Postponement of Preliminary and Final Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) allows the Department to extend this time period to 365 days and 180 days, respectively.

We determine that it is not practicable to complete this review within the original time frame because of the large number of respondents and the complexity of the legal and methodological issues in this review.

Accordingly, the deadline for issuing the preliminary results of this review is now no later than April 30, 1998. The deadline for issuing the final results of this review will be no later than 180 days from the publication of the preliminary results.

These extensions are in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)).

Dated: August 14, 1997.

**Jeffrey P. Bialos,**

*Principal Deputy Assistant Secretary for Import Administration.*

[FR Doc. 97–22269 Filed 8–21–97; 8:45 am]

**BILLING CODE 3510–DS–M**

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# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 081497A]**

## Pacific Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

**DATES:** The Council, and its advisory entities will meet during September 8–12, 1997. The Council meeting will begin on Tuesday, September 9, at 8 a.m. with an open session, will reconvene on Wednesday and Thursday at 8 a.m. in open session, and will reconvene on Friday at 8:30 a.m. in open session. On Friday, September 12, the Council will meet in closed session (closed to public) from 8 a.m. to 8:30 a.m. to discuss litigation and personnel matters.

**ADDRESSES:** The meetings will be held at the Doubletree Hotel-Columbia River (formerly Red Lion), 1401 North Hayden Island Drive, Portland, OR 97217; telephone: (503) 283–2111.

*Council address:* Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

**FOR FURTHER INFORMATION CONTACT:** Lawrence D. Six, Executive Director; telephone: (503) 326–6352.

**SUPPLEMENTARY INFORMATION:** The following items are on the Council agenda:

A. Call to Order
  1. Opening Remarks, Introductions, Roll Call
  2. Oath of Office for New Members
  3. Approve Agenda—ACTION
  4. Approve Minutes of March, April, and June 1997 Meetings—Action

B. Coastal Pelagic Species Management—Status Report on Plan Amendments

C. Highly Migratory Species Management In the Pacific
  1. Status of International Efforts
  2. Status of Data Collection Programs
  3. Need for Federal Management Authority
  4. Public Comments
  5. Council—Action

D. Pacific Halibut Management
  1. Status of 1997 Fisheries
  2. Proposed Changes to Regulations for 1998

E. Salmon Management
  1. Sequence of Events and Status of Fisheries
  2. Plan Amendment to Revise Oregon Coastal Natural Coho Management Goals
  3. Status of Plan Amendments for 1999 Implementation

F. Habitat Issues
  1. Report of the Steering Group
  2. Public Comments
  3. Council—Action

G. Dungeness Crab Management
  1. Analysis of Management Alternatives
  2. Report of the Tri-State Crab Committee
  3. Tribal Comments
  4. Scientific and Statistical Committee (SSC) and Public Comments
  5. Council—Action

H. Groundfish Management
  1. NMFS Research Vessel Proposal
  2. Preliminary Stock Assessments, Harvest Levels, and Other Specifications for 1998
  3. Status of Federal Regulations
  4. Status of Fisheries and Inseason Adjustments
  5. Fixed Gear Sablefish Management for 1998 (Limited Entry and Open Access)
  6. Proposed Changes to Regulations for 1998
  7. Capacity Reduction Program
  8. Plan Amendments

I. Administrative and Other Matters
  1. Comments on Proposed National Standard Guidelines
  2. Report of the Budget Committee
  3. Status of Legislation
  4. Appointments to Advisory Entities—Action
  5. November 1997 Agenda—Action
  6. Election of Chair and Vice-Chair for Annual Term Beginning October 1, 1997—Action

Adjourn

Schedule of Advisory Group/Committee Meetings

| Date/group | Time | Room |
|---|---|---|
| Sunday, September 7, 1997: | | |
| Groundfish Management Team (GMT) | 3 p.m. | TBA |
| Monday, September 8, 1997: | | |
| Secretarial Center | Sept. 8–12, 8 a.m. | Nestucca/Wallowa |
| GMT | 8 a.m. | TBA |
| SSC Salmon Subcommittee | 9 a.m. | TBA |
| Habitat Steering Group | 10 a.m. | TBA |
| SSC | 11 a.m. | TBA |
| Groundfish Advisory Subpanel (GAP) | 1 p.m. | TBA |
| Budget Committee | 3 p.m. | Umpqua |
| Buyback Committee | 7 p.m. | TBA |
| Tuesday, September 9, 1997: | | |
| GAP | 8 a.m. | TBA |
| SSC | 8 a.m. | TBA |
| Enforcement Consultants | 7 p.m. | Umpqua |
| Oregon State Delegation | 7 a.m. | TBA |
| California State Delegation | 7 a.m. | TBA |
| Washington State Delegation | 7 a.m. | TBA |
| Wednesday, September 10, 1997: | | |
| GAP | 8 a.m. | TBA |
| Oregon State Delegation | 7 a.m. | TBA |
| California State Delegation | 7 a.m. | TBA |
| Washington State Delegation | 7 a.m. | TBA |
| Thursday, September 11, 1997: | | |
| GAP (if necessary) | 8 a.m. | TBA |
| Oregon State Delegation | 7 a.m. | TBA |
| California State Delegation | 7 a.m. | TBA |
| Washington State Delegation | 7 a.m. | TBA |
| Friday, September 12, 1997: | | |
| GAP (if necessary) | 8 a.m. | TBA |
| Oregon State Delegation | 7 a.m. | TBA |
| California State Delegation | 7 a.m. | TBA |
| Washington State Delegation Special Accommodations | 7 a.m. | TBA |

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric W. Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: August 18, 1997.

**Gary C. Matlock,**

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

[FR Doc. 97–22346 Filed 8–21–97; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 081597A]**

### South Atlantic Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold a meeting of its Artificial Reef Habitat Sub-Group.

**DATES:** The meeting will be held on September 18, 1997, from 8:30 a.m. until 5:00 p.m.

**ADDRESSES:** The meeting will be held at the Florida Marine Research Institute, 100 Eighth Avenue, SE, St. Petersburg, FL 33701.

*Council address*: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407-4699.

**FOR FURTHER INFORMATION CONTACT:** Susan Buchanan, Public Information Officer; telephone: (803) 571-4366; fax: (803) 769-4520; email: susan.buchanan@noaa.gov

**SUPPLEMENTARY INFORMATION:** The Sub-Group will meet to review artificial reef description and distribution information in state, Federal and regional systems, and to discuss fishing and non-fishing threats to artificial reef habitats. The Sub-Group will also discuss recommendations for the Council's draft habitat policy statement on artificial reef habitat.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by September 8, 1997.

Dated: August 15, 1997.

**Gary C. Matlock,**

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

[FR Doc. 97–22347 Filed 8-21-97; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 081297D]**

### Endangered Species; Permits

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

**ACTION:** Issuance of permits 1039, 1041, 1042, 1043, 1044, 1045, and 1048 (P630, P632, P633, P636, P772#71, P638, and P641).

**SUMMARY:** Notice is hereby given that NMFS has issued permits to the Natural Resources Management Corporation in Eureka, CA (NRMC); the State of

California, Department of Transportation, District 4, in Oakland, CA (CalTrans4); William M. Kier and Associates in Sausalito, CA; Stephen Cannata in Arcata, CA; the Southwest Fisheries Science Center, Tiburon Laboratory, NMFS in Tiburon, CA (SWFSC); Michael H. Fawcett in Bodega Bay, CA; and the Sonoma County Water Agency in Santa Rosa, CA (SCWA) that authorize takes of adult and juvenile, threatened, central California coast coho salmon (*Oncorhynchus kisutch*) for the purpose of scientific research, subject to certain conditions set forth therein.

**ADDRESSES:** The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301-713-1401); and

Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (707–575–6066).

**SUPPLEMENTARY INFORMATION:** The permits were issued under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–222).

Notice was published on March 25, 1997 (62 FR 14115) that an application had been filed by NRMC (P630) for a scientific research permit. Permit 1039 was issued to NRMC on July 24, 1997. Permit 1039 expires on June 30, 2002.

Notice was published on March 26, 1997 (62 FR 14403) that an application had been filed by CalTrans4 (P632) for a scientific research permit. Permit 1041 was issued to CalTrans4 on July 24, 1997. Permit 1041 expires on June 30, 2002.

Notice was published on April 18, 1997 (62 FR 19104) that an application had been filed by William M. Kier and Associates (P633) for a scientific research permit. Permit 1042 was issued to William M. Kier and Associates on July 24, 1997. Permit 1042 expires on June 30, 1999.

Notice was published on March 25, 1997 (62 FR 14115) that an application had been filed by Stephen Cannata (P636) for a scientific research permit. Permit 1043 was issued to Stephen Cannata on July 24, 1997. Permit 1043 expires on June 30, 2000.

Notice was published on April 8, 1997 (62 FR 16789) that an application had been filed by SWFSC (P772#71) for a scientific research permit. Permit 1044 was issued to SWFSC on July 24, 1997. Permit 1044 expires on June 30, 2002.

Notice was published on March 26, 1997 (62 FR 14403) that an application had been filed by Michael H. Fawcett (P638) for a scientific research permit. Permit 1045 was issued to Michael H. Fawcett on July 24, 1997. Permit 1045 expires on June 30, 2002.

Notice was published on April 8, 1997 (62 FR 16789) that an application had been filed by SCWA (P641) for a scientific research permit. Permit 1048 was issued to SCWA on July 22, 1997. Permit 1048 expires on June 30, 2002.

Issuance of the permits, as required by the ESA, was based on a finding that such actions: (1) Were requested/proposed in good faith, (2) will not operate to the disadvantage of the ESA-listed species that is the subject of the permits, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing ESA-listed species permits.

Dated: August 14, 1997.

**Nancy Chu,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 97–22342 Filed 8-21-97; 8:45 am]

BILLING CODE 3510–22–F

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 081297E]**

## Endangered Species; Permits

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

**ACTION:** Receipt of two applications for scientific research permits (P651, P666).

**SUMMARY:** Notice is hereby given that Louisiana-Pacific Corporation (LPC) in Trinidad, CA and the California Department of Forestry and Fire Protection, Region 1 (CDFFP) in Santa Rosa, CA have applied in due form for permits that would authorize takes of a threatened species for scientific research.

**DATES:** Written comments or requests for a public hearing on either of these applications must be received on or before September 22, 1997.

**ADDRESSES:** The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (707 575–6066).

Written comments or requests for a public hearing should be submitted to the Protected Species Division in Santa Rosa, CA.

**SUPPLEMENTARY INFORMATION:** LPC and CDFFP request permits under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

LPC (P651) requests a five-year permit for takes of juvenile, threatened, central California coast coho salmon (*Oncorhynchus kisutch*) associated with fish population studies on LPC properties in Sonoma and Mendocino County. The studies consist of coho salmon distribution and abundance surveys. ESA-listed juvenile fish are proposed to be captured, anesthetized, handled (identified and measured), allowed to recover from the anesthetic, and released. ESA-listed fish indirect mortalities associated with the research are also requested.

CDFFP (P666) requests a five-year permit for takes of juvenile, threatened, central California coast coho salmon (*Oncorhynchus kisutch*) associated with monitoring projects in coastal streams within the Evolutionarily Significant Unit. The studies consist of coho salmon distribution and abundance surveys. ESA-listed juvenile fish are proposed to be captured, anesthetized, handled (identified and measured), allowed to recover from the anesthetic, and released. ESA-listed fish indirect mortalities associated with the research are also requested.

Those individuals requesting a hearing on either of the requests for a permit should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the above application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: August 14, 1997.

**Nancy Chu,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 97–22348 Filed 8-21-97; 8:45 am]

BILLING CODE 3510–22–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

August 18, 1997.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing a limit.

**EFFECTIVE DATE:** August 19, 1997.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

**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).

The current limit for Categories 338–S/339–S, a sublimit of Categories 338/339, is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 62 FR 6950, published on February 14, 1997.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but is designed to assist only in the implementation of its provisions.

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

August 18, 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 February 10, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products and silk apparel, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997.

Effective on August 19, 1997, you are directed to increase the limit for Categories 338–S/339–S [1], a sublimit of 338/339, to 1,894,466 dozen [2], as provided for under the terms of the bilateral agreement between the Governments of the United States and the People's Republic of China. The limit for 338/339 remains unchanged.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to 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. 97–22300 Filed 8–21–97; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Learn and Serve America National Clearinghouse

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice of correction of dates and award amount.

**SUMMARY:** This notice corrects the date of availability for the application guidelines, the application deadline, and the first year's award amount published in the **Federal Register** on June 9, 1997 (62 FR 31417, 31418). The new dates are revised in the notice as follows: ''Application guidelines will be available August 15, 1997. Applications must be submitted to the Corporation no later than 3:00 p.m. (EST) September 30, 1997.''. The new award amount is revised as follows: ''The first year's award will total approximately $750,000.''.

Dated: August 19, 1997.

**Stewart A. Davis,**

*Acting General Counsel, Corporation for National and Community Service.*

[FR Doc. 97–22337 Filed 8–21–97; 8:45 am]

BILLING CODE 6050–28–P

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Availability of Funds for National Providers in Training and Technical Assistance

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice of availability of funds.

**SUMMARY:** The Corporation for National and Community Service (Corporation) announces the availability of approximately $5.37 million to provide training and technical assistance (T/TA) to national service programs supported by the Corporation in the following 14 areas for fiscal years 1997 and 1998: (A) Conflict Resolution; (B) Human Relations and Diversity Training; (C) Educational Success; (D) Financial Management; (E) Supervisory Skills Training; (F) Training Materials Development; (G) National Service Resource Center; (H) Organizational Development and Program Management; (I) Public Safety Program Support; (J) Risk Management; (K) Crew-based Programming; (L) Member Development and Management; (M) Sustainability; and (N) Out-of-School Time. The Corporation will evaluate proposals made in each of the fourteen areas separately. The Corporation expects to make awards in each area in the form of one-year cooperative agreements with the possibility of a second year extension based on performance, need, and availability of funds.

**DATES:** Proposals must be received by the Corporation by 3:00 p.m. Eastern time on September 26, 1997.

**ADDRESSES:** All proposals should be submitted to the Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, DC 20525, Attention: Laurel Ihator, Room 9808. Proposals may not be submitted by facsimile. Applicants are requested to submit one (1) unbound, original proposal and two (2) copies.

**FOR FURTHER INFORMATION CONTACT:** Jim Ekstrom or Susan Schechter at the Corporation for National and Community Service, (202) 606–5000, ext. 436, T.D.D. (202) 565–2799. Copies of Corporation materials referenced in this Notice may be reviewed at the Corporation, 1201 New York Avenue, NW, Washington, DC.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Corporation for National and Community Service was established in 1993 to engage Americans of all ages and backgrounds in service to their

communities. The Corporation's national and community service programs provide opportunities for participants to serve full-time and part-time, with or without stipend, as individuals or as a part of a team. AmeriCorps State and National programs and AmeriCorps VISTA engage thousands of Americans on a full- or part-time basis at 1,000 operating sites to help communities meet their toughest challenges. Learn and Serve America integrates service into the academic life of more than 800,000 students in all 50 states. The National Senior Service Corps utilizes the skills, talents and experience of over 500,000 older Americans to help make communities stronger, safer, healthier and smarter.

The Corporation directly operates the AmeriCorps*VISTA and *NCCC programs. More than 4,000 AmeriCorps*VISTAs (Volunteers in Service to America) serve to develop grassroots programs, mobilize resources and build capacity for service programs across the nation. AmeriCorps*NCCC (National Civilian Community Corps) provides an opportunity for approximately 1,000 individuals between the ages of 18 and 24 to participate in a residential program on downsized military bases.

AmeriCorps*State and National programs, which involve 25,000 Americans each year in results-driven community service, are grant programs managed either by (1) State Commissions that select and oversee programs operated by local organizations or (2) national non-profit organizations that identify and act as parent organizations for operating sites across the country. Learn and Serve grants provide service learning opportunities for students in K–12 and higher education settings. The National Senior Service Corps is operated through grants to local organizations for Retired Senior Volunteer Programs (RSVP), Foster Grandparents and Senior Companions to provide service to their communities.

## II. Eligibility

Public agencies, non-profit organizations (i.e., youth-serving groups, community-based organizations, and service organizations), institutions of higher education, Indian tribes, and for-profit companies are eligible to apply. Organizations that operate or intend to operate Corporation-supported programs are eligible. Organizations may apply to provide T/TA in partnership with organizations seeking other Corporation funds. Submissions from organizations that document an ability to provide T/TA on a nation-wide basis will be preferred. Based on previous T/TA competitions and the Corporation's estimate of potential applicants, the Corporation expects fewer than ten applications to be submitted in each area.

## III. Period of Assistance and Other Conditions

### *A. Cooperative Agreements*

Awards made under this notice will be in the form of cooperative agreements. Administration of the cooperative agreements is controlled by the Corporation's regulations, 45 CFR part 2541 (for agreements with state and local government agencies) and 45 CFR part 2543 (for agreements with institutions of higher education and other non-profit organizations.)

### *B. Use of Materials*

To ensure that materials generated for training and technical assistance purposes are available to the public and readily accessible to grantees and subgrantees, the Corporation retains royalty-free, non-exclusive, and irrevocable licenses to obtain, use, reproduce, publish, or disseminate products, including data produced under the agreement, and to authorize others to do so. To the extent practical, the awardee will agree to make available to the field products at no cost or at the cost of reproduction.

### *C. Time Frame*

The Corporation expects that work under agreements awarded through this Notice will commence as soon as possible after the conclusion of the Corporation's selection and negotiation processes—generally anticipated to be within the 60 days following the due date for proposals. The Corporation expects that the period of performance will be one year, with the possibility of a second year extension based on performance, need and availability of funds.

### *D. Other Corporation-sponsored Training and Technical Assistance*

In addition to using the T/TA providers selected under this notice, the Corporation provides training and technical assistance to grantees through in-house sector specialists in education, service-learning, public safety, youth development, leadership (through the Corporation's National Service Leadership Institute), and environment (through the Corporation's Center for National Service and the Environment). The in-house sector specialists advise headquarters staff, act as liaisons to other federal initiatives and provide and manage T/TA in their areas of expertise. In addition, the Corporation may select additional providers through later notices as needs arise.

## IV. T/TA Activities

The following are basic principles of the Corporation's T/TA system. The provider selected for each area is expected to integrate these principles into its service delivery.

- Coordinate delivery of on-site T/TA services, scheduled training sessions and all other T/TA services with staff of the State Commission, State Education Agency and/or Corporation State Office in the State where services have been requested.
- Coordinate continually with the Corporation and State Commission staff concerning programs that are in particular need of T/TA support.
- Conduct aggressive, targeted outreach to programs identified by the Corporation and State Commissions as being in need of T/TA services.
- Work in partnership with programs to help identify/clarify needs and determine the most suitable responses.
- Prepare and submit for approval by the Corporation specific criteria for the evaluation of their T/TA services. After each T/TA event, to facilitate continuous improvement of these services, providers will solicit evaluations of their services consistent with the approved evaluation criteria. Providers will maintain records on these evaluations and provide these records to the Corporation or an authorized representative upon request. Providers will also submit to the Director of T/TA a quarterly report which, in part, (1) compares accomplishments with goals; (2) describes the nature and scale of T/TA activity; (3) provides aggregate summaries of the evaluations of each event; (4) recommends agendas based on analyses of T/TA activity and trends; (5) as practicable, relates activity costs to budget line items; (6) identifies developments that hinder compliance with the agreement; and (7) when appropriate, cites or proposes corrective action, and seeks Corporation assistance. The Corporation may conduct independent assessments of each provider's performance.
- Thoroughly orient and train staff and consultants in the Corporation's background and objectives.
- Respond to requests for T/TA from programs, State Commissions, Corporation State Offices, State Education Agencies, national non-profits as well as collaborate in training events organized by other providers for the Corporation.

• Conduct aggressive outreach to national service programs as well as to State Commissions, State Education Agencies, and Corporation State Offices to promote awareness of available T/TA services.

• Use peer-provided T/TA in situations where this approach is feasible and appropriate. Over the past three years AmeriCorps, National Senior Service Corps and Learn and Serve program directors; State Commission chairpersons, executive directors, commissioners; and others involved in national service have proven to be particularly effective as T/TA providers.

• Identify, document and transmit effective practices through all their T/TA services.

• Develop training that is interactive, experiential and based on the principles of adult learning.

• Develop training designs that accommodate participants at various levels of existing knowledge and skills; offer basic and advanced training as required.

• Ensure that assistance is accessible to persons with disabilities as required by law.

• Link all T/TA activities to the greatest extent possible to the goal of sustainability in the absence of Corporation financial support.

• Help programs improve the quality of their objectives and desired outcomes.

• While the AmeriCorps*State and National program is expected to be the primary user of services in most categories under this Notice, address the needs of program personnel in other Corporation-supported programs when appropriate.

• Operate with a focus on capacity-building to help programs develop their internal T/TA capacity, such as by improving their skills in problem identification, problem solving and assessing local T/TA resources. Providers should develop train-the-trainer initiatives for the purpose of increasing capacity at the state and local level to deliver T/TA services to national service programs. Providers should support and encourage programs' access to local T/TA resources.

• Develop and maintain a network of geographically dispersed expert resource people that includes staff from Corporation-funded programs.

• Use electronic communication as much as possible to facilitate the delivery of T/TA services. The Corporation is especially interested in approaches that expedite service delivery, increase communications and that are cost-efficient. In all T/TA activities, programs should be encouraged and assisted in using electronic communication and automation.

The Corporation will evaluate proposals in each of the following areas listed A through N separately. Amounts listed reflect fund availability for the first year only.

*A. Conflict Resolution (up to $300,000)*

These services will assist members and participants to work effectively in stressful situations, to enhance effective communications among project participants and to maximize project success.

Specific tasks include, but are not limited to, the following:

1. Conduct training of trainers for approximately 250 staff of Corporation-funded programs through approximately 10 regional training events. This cadre of trainers will serve as a resource for training needs at the state and local level.

2. Provide mentoring following the training of trainers to assist program staff in tailoring the training to the specific needs of local programs and to support the initial training delivery.

3. Consult on site with at least 10 State Commissions to assist in developing program services in community mediation, peer counseling and other conflict resolution techniques, especially for programs involving youth.

4. Provide telephone and on-line consultation and materials as appropriate to assist programs with issues involving conflict.

5. Administer appropriate evaluation instrument(s), including after each training or technical assistance event, to facilitate continuous improvement.

*B. Human Relations and Diversity Training (up to $320,000)*

Two of the four goals that unite the Corporation's national service initiative are Getting Things Done and Strengthening Communities. An element critical to success in achieving these goals is the ability of programs to mold Americans of varied backgrounds into strong teams to work effectively in diverse communities. There is, therefore, a need for program staff and members to receive training that promotes understanding and respect among people of different origins, that provides skills for working with and managing diverse populations and that offers techniques for preventing and resolving situations where issues of diversity and communication hinder achieving program goals.

Specific tasks include, but are not limited to, the following:

1. Collaborate with State Commissions and a representative group of national non-profit grantees in implementing a minimum of 20 regional training workshops of 20–25 participants each. Workshops should increase personal awareness of and competency with diversity issues. They should also enhance staff skills in developing and supporting diverse, well-functioning teams and community partnerships, as well as in diagnosing diversity challenges and facilitating discussions and training.

2. Deliver a minimum of 10 customized T/TA sessions in response to site-specific diversity issues.

3. Help State Commission/national non-profit staff and programs enhance their ability to select effective diversity training.

4. Provide on-line and telephone assistance and resource materials.

5. Administer appropriate evaluation instrument(s), including after each training and technical assistance event, to facilitate continuous improvement.

*C. Educational Success (up to $500,000)*

Seventy-five percent of the Corporation's programs address the educational success of children in some way. Educational success T/TA services should address the need for technical expertise and identify and disseminate effective practices in educational success using service strategies.

Specific tasks include, but are not limited to, the following:

1. Provide information, materials, and documentation concerning effective reading and tutoring programs to all programs upon request. The materials and information must be targeted to the needs of young children, specifically from birth through age 8, including support for parents as first teachers. Develop a monograph series which articulates effective practices being used by national service programs in tutoring and reading enhancement.

2. Refer programs to organizations and individuals who can provide technical, high-quality support in the design and implementation of effective tutoring programs making use of volunteers and others engaged in service.

3. Identify and partner with a network of trainers who can provide hands-on training and support to local programs related to the goal of helping ensure that all children read well and independently by the end of third grade.

4. Provide for initial consultation between the training providers and program deliverers to assure the start of high-quality programs. Such initial consultation may include site visits and start-up assessments to ensure that

programs have in place mechanisms for ongoing T/TA support funded by the local programs.

5. Organize and conduct common training sessions for project directors and other participants in national service programs engaged in tutoring young children.

6. Work in close coordination with Corporation staff and other national service T/TA providers to share resources and provide referrals to programs on related T/TA needs.

7. Administer appropriate evaluation instrument(s), including after each training and technical assistance event, to facilitate continuous improvement.

The methodology for implementing the tasks should include a minimum of 50 training sessions for at least 900 national service participants to be organized by the provider on a regional basis or at the initiation of state or local entities (i.e., state commission, state education agency or other national service organization). In addition, the provider will implement telephone, on-line, and on-site technical assistance; materials development; identification, acquisition and dissemination of primary source documents to local programs; responding to information requests; support for affinity groups and peer exchange; and production of newsletter and/or electronic information, including a World Wide Web site.

T/TA services must be supportive of the range of generally accepted approaches to teaching reading and the essential elements of high-quality reading programs for young children. Programs to be served will be both community- and school-based. T/TA approaches must provide skills needed to work in the school environment and with school personnel, to recruit and train volunteers, and to work with parents and other care-giver groups.

*D. Financial Management (up to $700,000)*

Corporation-funded programs need access to training and technical assistance information regarding their responsibilities and procedures for the management of federal funds. Sound fiscal management is critical to the effective operation of national service programs. Audiences will be Corporation-funded state and national grantees, and state commissions.

Specific tasks include, but are not limited to, the following:

1. Conduct at least five regional and 20 State-based workshops. Training and technical assistance should cover, but not be limited to, the following topics: federal grants management; financial management systems; budget preparation; financial reporting; developing and implementing internal controls; cost allocation; cash management; developing fiscal policies and procedures; fiduciary responsibility; assessing financial risk factors associated with Corporation grants; assistance in overseeing and monitoring adherence to grant terms and conditions; administrative requirements; supporting documentation; in-kind contributions; matching funds; living allowances and other member support costs.

2. Conduct at least 20 on-site technical assistance visits to State Commissions and programs. On-site technical assistance is expected to require certified public accountants with extensive experience in federal accounting standards and procedures.

3. Provide telephone and on-line technical assistance.

4. Develop and maintain a network of geographically-dispersed expert resource people to include staff from Corporation-funded programs.

5. Develop materials to include a compilation of effective practices used in the field.

6. Administer appropriate evaluation instrument(s), including after each training and technical assistance event, to facilitate continuous improvement.

To perform these tasks, the Corporation envisions a national network of consultants. Such consultants would be easily accessible for follow-up and would have state of the art knowledge of relevant state and local law and regulations.

*E. Supervisory Skills Training (up to $350,000)*

Supervision is the management task common to all programs that most directly affects participants' and project performance. Training establishes a uniform standard across programs and reinforces the Corporation's expectations.

Specific tasks include, but are not limited to, the following:

1. Conduct at least 10 regional workshops on basic and advanced supervisory skills.

2. Conduct customized training in supervision skills for at least 10 states.

3. Conduct at least two training of trainers workshops.

4. Provide telephone and on-line technical assistance.

5. Offer at least five program specific training events or on-site technical assistance.

6. Develop materials that include compilation of effective practices from programs and dissemination of primary source documents.

7. Administer appropriate evaluation instrument(s), including after each training and technical assistance event, to facilitate continuous improvement.

*F. Training Materials Development (up to $350,000)*

These services respond to the need for consistent, quality participant training developed in the most cost effective manner possible.

Specific tasks include, but are not limited to, the following:

1. Starting Strong: A Guide to Pre-Service Training is the central element of the member training curriculum for every program. It represents the range of topics deemed appropriate by the Corporation and the training techniques found to be most effective for participant training. Update the 1996 edition, as appropriate, print and distribute.

2. Develop and distribute six to eight easy-to-use, brief (approximately 20 pages each) training modules on topics most frequently used in member and volunteer training. Convene an advisory committee of national service program and Corporation staff to define the topics.

3. Deliver at least 20 workshops on experiential training techniques at program or State-sponsored events.

4. Provide telephone or electronic technical assistance to programs on member and volunteer training issues.

5. Work with the other national providers as appropriate to create training modules from their most useful and popular training events.

6. Administer appropriate evaluation instrument(s), including after each training and technical assistance event, to facilitate continuous improvement.

*G. National Service Resource Center (up to $400,000)*

These services respond to the need for a central repository of information and materials in the field of national service and the need for the development and distribution of new information in response to changing program needs.

Specific tasks include, but are not limited to, the following:

1. Provide a toll-free assistance line for grantees to access technical assistance services.

2. Provide reference services and referrals to national T/TA providers.

3. Maintain and expand a lending library of publications, kits, curricula, and videos on topics relevant to national service programs, as well as copies of publications produced by other national T/TA providers and Corporation-supported programs.

4. Develop and disseminate, as requested, materials and other relevant resources.

5. Conduct literature searches in response to requests for information and resources on specific issues from national service programs.

6. Publish a quarterly newsletter of T/TA information, a resource guide of national T/TA services, and maintain a master calendar of T/TA events on the NRSC web page.

7. Initiate and manage electronic Listservs that connect Corporation programs and subgroups of Corporation-supported programs as appropriate.

8. Provide a minimum of 10 on-site training sessions on information management, accessing the Internet (including information on necessary equipment, costs and access options)

9. Provide consultation on-line and by telephone on different aspects of information management including the development and maintenance of resource libraries at the local level.

10. Provide World Wide Web site resources including a searchable database of library holdings and on-line versions of available updated print resources.

11. Administer appropriate evaluation instrument(s), including after each training and technical assistance event, to facilitate continuous improvement.

*H. Organizational Development and Program Management (up to $700,000)*

These services respond to the wide range of needs for program management assistance requested by grantees to improve program performance and quality. Well functioning organizations are much more likely to provide quality services to communities and greater experiences for national service volunteers.

Specific tasks include, but are not limited to, the following:

1. Provide, arrange for, or connect programs to information, training, and technical assistance in organizational development and program management.

2. Offer training in various settings (State-based and regional) and of various lengths and complexity. Such training may be organized by the provider in response to a request or may be in the context of events organized by a State Commission, other provider or the Corporation. At minimum, the provider must conduct or provide for five regional training sessions and 50 State-based training sessions per year.

3. Develop materials for use in training deliveries.

4. Provide technical assistance on-site, on-line, and by telephone in the form of one-time consultations and multiple interventions, as required. At minimum, the provider must conduct 75 on-site technical assistance visits per year.

5. The T/TA services offered should at a minimum include the following: board development and management; staff management; program planning and management to include continuous improvement and evaluation; volunteer recruitment and management; member recruitment, member support, development and retention; community partnerships and organizational collaboration; multi-site management; effective communication and public awareness; and program sustainability.

6. Coordinate peer exchanges among national service programs.

7. Organize and/or support affinity groups (i.e., groups of programs defined by their common focus or needs).

8. Collaborate with and broker services of other public and private providers of training and technical assistance services available at the national, state and/or local levels.

9. Administer appropriate evaluation instrument(s), including after each training and technical assistance event, to facilitate continuous improvement.

*I. Public Safety Program Support (up to $300,000)*

Programs working in the areas of domestic violence and victim assistance share unique needs for specialized information and training beyond the boundaries of community service. Services in this area are intended to address programs' needs for information on safety for members, background checks, volunteer burn-out, and other topics unique to the criminal justice and judicial systems.

Specific tasks include, but are not limited to, the following:

1. Provide telephone support as well as on-site training of or technical assistance to at least 25 programs or States.

2. Convene at least 5 regional or national meetings or workshops.

3. Identify and make available resource materials.

4. Support at least three affinity groups (i.e., groups of programs defined by their common focus or needs).

5. Administer appropriate evaluation instrument(s), including after each training and technical assistance event, to facilitate continuous improvement.

*J. Risk Management (up to $100,000)*

These services respond to the needs of community-based organizations to assess their risks on various dimensions and adopt cost-effective plans for dealing with those risks.

Specific tasks include, but are not limited to, the following:

1. Provide technical assistance regarding risk management issues.

2. Develop and disseminate publications addressing risk management concerns identified through field surveys and by the Corporation.

3. Design and deliver training based on previously developed materials and those produced for the Corporation. At minimum, the provider must conduct 25 State-based training sessions in one year.

4. Conduct legal and practical research for use in the development of risk management publications.

5. Provide telephone and on-line technical assistance.

6. Administer appropriate evaluation instrument(s), including after each training and technical assistance event, to facilitate continuous improvement.

*K. Crew-based Programming (up to $300,000)*

These services are designed to meet the special needs of programs that deliver services through a crew structure.

Specific tasks include, but are not limited to, the following:

1. Design and deliver customized training in various settings (State-based and regional) and of various lengths and complexity. Such training may be organized by the provider in response to a request or may be in the context of events organized by a State Commission, other provider or the Corporation. At a minimum, the provider must conduct 10 regional training sessions and 25 State-based training sessions per year.

2. The T/TA services offered should include the following: crew-based program management, operations and staff development to include leadership, project management and member supervision.

3. Develop and disseminate a monograph and other materials in support of T/TA activities, with particular emphasis on the best practices of crew-based programs.

4. Collaborate with and broker services of other T/TA providers, national and local.

5. Provide telephone, on-line and on-site technical assistance in the form of one-time consultations and multiple interventions, as required. At minimum, the provider must conduct 30 on-site technical assistance visits in one year.

6. Administer appropriate evaluation instrument(s), including after each training and technical assistance event, to facilitate continuous improvement.

*L. Member Development and Management (up to $350,000)*

These services are targeted to the needs of the AmeriCorps Education Award Program. This program provides education awards for members following their successful completion of service. The program does not fund living allowances for members and provides only limited administrative support to projects. This program allows for the expansion of successful models and initiation of new models of service opportunities. Programs are challenged to create meaningful, accessible service activities that engage members throughout their terms of service.

Specific tasks include, but are not limited to, the following:

1. Work with at least 10 State Commissions and AmeriCorps Education Award programs on their special program management needs and support their integration into the national service network.

2. Provide T/TA in the areas of: recruitment, selection, motivation and retention of members and volunteers; member and volunteer development; team-building; working with and developing community partners; multi-site program management; service-learning methodology including member and volunteer orientation and reflection sessions; problem identification and collaborative solution generation; time management and day-to-day organizational skills; volunteer generation and management and working with diverse volunteers.

3. Conduct at least 40 visits where facilitated peer exchange best meets the needs of programs.

4. Develop, test and implement a process for use by AmeriCorps Education Award programs to document member activities.

5. Administer appropriate evaluation instrument(s), including after each training and technical assistance event, to facilitate continuous improvement.

*M. Sustainability (up to $400,000)*

These services respond to grantees' need to build larger constituencies, create more partnerships, leverage more resources, and generate additional funds as the match requirement increases and Federal funds are decreased.

Specific tasks include, but are not limited to, the following:

1. Design training specific to the needs of Corporation-funded programs and deliver that training through State-based and regional workshops of various lengths and complexity. At minimum, the provider must conduct ten regional and 35 State-based training sessions.

2. Develop a sustainability curriculum that (a) acknowledges applicable law and Corporation policy; (b) addresses the unique challenges service programs face in sustaining local operations; and (c) offers planning and implementation strategies for accessing community resources, to include raising funds in ways consistent with Office of Management and Budget guidelines.

3. Develop materials to support T/TA activities.

4. Offer telephone and on-line technical assistance.

5. Administer appropriate evaluation instrument(s), including after each training and technical assistance event, to facilitate continuous improvement.

*N. Out-of-School Time (up to $300,000)*

These services respond to the needs of grantees that are using service as a mechanism for expanding the scope and quality of services available to children and youth when schools are not in session. In this area, as in all others, using service as a strategy to support the goals of welfare reform is a goal.

Specific tasks include, but are not limited to, the following:

1. Provide training and technical assistance to at least 25 national service programs involving children and youth in out-of-school time activities, including both formal and informal before school, after school, weekend and summer programs.

2. Coordinate follow-up activities to the December 1996 forum entitled Expanding Opportunities in Out-of-School Time: A National Forum on Service and School-Age Care, including the development of resource materials, assisting pilot state initiatives, monitoring the School's Out! listserv and website, and bringing together national partner organizations for problem solving.

3. Provide information, materials, and documentation concerning quality principles for school-age care programs and the integration of service/service-learning into out-of-school time programs for children and youth. Develop and disseminate a monograph which reflects effective practices by national service programs in this area.

4. Identify, train and partner with a network of trainers who can provide training and support to out-of-school time programs. AmeriCorps members and other national service volunteers should be included in this network.

5. Provide for initial consultation between the trainers and programs to assure the start of high-quality programs. This may require on-site visits.

6. Organize and hold at least five training sessions for project directors and other participants in national service programs engaged in out-of-school time activities for children and youth.

7. Administer appropriate evaluation instrument(s), including after each training and technical assistance event, to facilitate continuous improvement.

## V. Application Guidelines

*A. Proposals must include*

1. A cover page listing: name, address, phone number, fax number, e-mail address and World Wide Web site (if available) of the applicant organization and contact person; the subject area in which the applicant proposes to provide T/TA (see Summary (A)—(N)); a 50–75 word summary of the proposed T/TA program or activity; and the total funding requested (not to exceed the amounts identified in Section IV).

2. A narrative of no more than 10 double-spaced, single-sided, typed pages in no smaller than 12-point font describing:

(a) Objectives, scope of activities being proposed, and expected outcomes (e.g., proposed number and duration of training events and number of participants; proposed number of consultations).

(b) Detailed work plan for accomplishing the objectives to include a timeline demonstrating implementation of each objective.

(c) Applicant's plan for regularly evaluating its performance and reporting the findings and proposed improvements to the Corporation.

3. A narrative of no more than four double-spaced, single-sided, typed pages in no smaller than 12-point font describing the organization's capacity to provide T/TA services nationwide, including descriptions of recent work similar to that being proposed, references that can be contacted related to that work, organizational structure and staff strengths and backgrounds (resumes of proposed staff may be included in an appendix);

4. A detailed budget, including the allocation of person-hours/days by task, an estimate of travel and other direct costs by task as appropriate. Costs in proposed budgets must consist solely of costs allowable under applicable reimbursable cost principles found in applicable OMB Circulars or the Federal Acquisition Regulations. A supporting budget narrative including an explanation of the basis for cost estimates is required. Include any information on funding from other sources if any. (Provider match is not required.)

5. Resumes and/or other descriptions of staff qualifications may be included in an appendix and are not subject to the page limits that are otherwise applicable.

*B. Selection Process and Criteria*

To ensure fairness to all applicants, the Corporation reserves the right to take remedial action, up to and including disqualification, in the event a proposal fails to comply with the requirements relating to page limits, line spacing, and font size. The Corporation will assess applications based on the criteria listed below.

1. Quality (35%)

The Corporation will consider the quality of the proposed activities based on:

(a) Demonstrated understanding of the needs of Corporation-funded programs, the States, and/or the Corporation itself.

(b) Description of proposed T/TA techniques and plans to use tested methods or ways to test training activities or curricula on a small scale before offering them on a large scale.

(c) Degree to which the objectives are addressed through the work plan.

2. Organizational and Personnel Capacity (35%)

The Corporation will consider the organizational capacity of the applicant to deliver the proposed services based on:

(a) Organizational experience in delivering high-quality training and technical assistance, particularly in the area(s) under consideration,

(b) Organizational experience in delivering high-quality training and technical assistance flexibly, creatively, responsively, and working in partnership with other organizations and individuals.

(c) Background of the organization's leadership and staff/consultants proposed for the project.

(d) Demonstrated ability to manage a federal grant or apply sound fiscal management principles to grants and cost accounting.

(e) Demonstrated ability to provide T/TA services nationwide on a cost effective basis.

3. Evaluation (10%)

The Corporation will consider how the applicant:

(a) Proposes to assess its services and products delivered under the award.

(b) Plans to use assessments of its services and products to modify and improve subsequent services and products.

4. Budget (20%)

The Corporation will consider the budget based on:

(a) Scope of proposed T/TA activity (i.e., number of people, programs, and/or States proposed T/TA activities are planned to reach);

(b) Cost-effectiveness of the proposed activity; the degree to which the T/TA provider proposes a reasonable estimate of the amount of services the organization will be able to provide given the requested amount of funds and the organization's existing resources.

Dated: August 19, 1997.

**Stewart A. Davis,**

*Acting General Counsel.*

[FR Doc. 97–22391 Filed 8–21–97; 8:45 am]

BILLING CODE 6050–28–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Proposed Collection; Comment Request

**AGENCY:** Defense Investigative Service, DOD.

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Investigative Service announces the proposed continuation of a public information collection affecting cleared Department of Defense contractors 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 of the 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 received by October 21, 1997.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to Defense Investigative Service, Policy Directorate, ATTN: Mr. Stephen F. Lewis, 1340 Braddock Place, Alexandria, VA 22314–1651.

**FOR FURTHER INFORMATION CONTACT:**

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Defense Investigative Service at (703) 325–6034.

*Title; Associated Forms; and OMB Number:* Department of Defense Security Agreement, the Appendage to the Security Agreement, and Certificate Pertaining to Foreign Interest; DD Forms 441, 441–1, and DD Form 441S (to be converted to Standard Form); OMB No. 0704–0194.

Needs and Uses: Executive Order 12829 stipulates that the Secretary of Defense shall serve as the Executive Agent for inspecting and monitoring the contractors, licensees and grantees who require access to classified information and for determining eligibility for access to classified information. The specific requirements necessary to protect classified information released to private industry are set for the DoD 5200.22–M, ''National Industrial Security Program (NISP), they must execute DD Form 441, ''Department of Defense Security Agreement,'' which is the initial contract between industry and the government. This legally binding document details the responsibility of both parties and obligates the contractor to fulfill the requirements outlined in DoD 5220.22–M. The DD Form 441–1, ''Appendage to the Department of Defense Agreement,'' is used to extend the agreement to separately located branches and offices of the contractor. DD Form 441S, ''Certificate Pertaining to Foreign Interests,'' must be submitted to provide certification regarding elements of Foreign Ownership, Control, and Influence (FOCI) as stipulated in paragraph 2–302b of the NISPOM.

*Affected Public:* Business or other for profit.

*Annual Burden Hours:* 3,735.

*Number of Respondents:* 6,225.

*Responses per Respondent:* 1.

*Average Burden per Response:* 36 minutes.

*Frequency:* On occasion; one time and when the respondent changes name, organizational structure, or moves.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

The execution of the DD Forms 441, 441–1, and 441S (SF X322 (Draft)) is a factor in making a determination as to whether a contractor is eligible to have a facility security clearance. It is also the legal basis for imposing NISP security requirements on eligible contractors. These requirements are necessary in

order to preserve and maintain the security of the United States through establishing standards to prevent the improper disclosure of classified information.

**Conversion of DD Form 441S to Standard Form**

The form is required of all contractors being processed by the Department of Defense, Department of Energy, Nuclear Regulatory Commission, and the Central Intelligence Agency for security clearances. Contractors must submit the form to provide certification regarding elements of Foreign Ownership, Control, and Influence (FOCI) as stipulated in paragraph 2–302b of the NISPOM. Cleared contractors are required to update the form every five years. The proposed Standard Form, SF X322 (Draft), will replace the existing DD Form 441S and will implement the specific requirements of the January 1995 NISPOM. The proposed Standard Form is identical to the current DD Form 441S. Obligation for use is mandatory. DoD has estimated annual usage to be approximately 1,100 per year. The DoD anticipates usage of approximately 1,500 forms for the first year and about 500 in succeeding years. NRC advises that usage of the form will be less than twenty-five per year. CIA usage will be approximately 5,000 per year. The form is authorized for local reproduction and will be available electronically on the World Wide Web. The form will display OMB approval number 0704–0194 and will be effective upon GSA approval for conversion.

Dated: August 18, 1997.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Office, Department of Defense.*

[FR Doc. 97–22287 Filed 8–21–97; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Proposed Collection; Comment Request

**AGENCY:** Office of the Assistant Secretary of Defense (Strategy and Requirements), DOD.

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Assistant Secretary of Defense (Strategy and Requirements) announces the proposed reinstatement of a public information 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 of the proposed information collection; (c) ways to enhance the quality, 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 received by October 21, 1997.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Attn: Dr. Edmond J. Collier, Arlington, VA 22209–2248.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call the National Security Education Program Office, at (703) 696–1991.

*Title: Associated Form; and OMB Number:* National Security Education Program (NSEP) Proposal Budget Estimate Worksheet; DD Form 2729; OMB Number 0704–0366. National Security Education Program (NSEP) Proposal Cover Sheet; DD Form 2730; OMB Number 0704–0366.

*Needs and Uses:* The Information collection is necessary to obtain and record the qualification and budget information of universities submitting proposals for NSEP funding.

*Affected Public:* U.S. public and private institutions of higher education.

*Annual Burden Hours:* 2000.

*Number of Respondents:* 250.

*Responses per Respondent:* 1.

*Average Burden per Response:* 1 hour and 25 minutes.

*Frequency:* On Occasion.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

Respondents are representatives of U.S. colleges and universities who choose to submit a proposal in competition for a National Security Education Program (NSEP) Institutional Grant. The NSEP was established by the National Security Education Act of 1991. DD Form 2729, National Security Education Program Proposal Budget Estimate Worksheet, is a single-page document in which the applicant indicates the cost associated with the proposal by four major categories. Without this form there would be no precise, standard manner for applicants to portray their budget requests. Further, there would be no consistent measure by which the merit-review panelists could judge these proposals. DD Form 2730, National Security Education Program Proposal Cover Sheet, is a concise vehicle for transmitting proposals. This form eliminates the need for lengthy nonstandard letters of transmittal. The form also facilitates processing the proposals as all data elements necessary for processing the proposal is on this one form. Additional savings of time and money are realized by the respondents who are required to use these forms instead of unnecessarily elaborate brochures, elaborate art work, expensive paper and bindings, or other such presentations.

Dated: August 18, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–22288 Filed 8–21–97; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Proposed Collection; Comment Request

**AGENCY:** Office of the Assistant Secretary of Defense (Strategy and Requirements).

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Assistant Secretary of Defense (Strategy and Requirements) announces the proposed reinstatement of a public information 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 of the proposed information collection; (c) ways to enhance the quality, 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 received by October 21, 1997.

**ADDRESSES:** Written comments and recommendations on the proposed

information collection should be sent to National Security Education Program, 1101 Wilson Boulevard, Suite 1210, ATTN: Dr. Edmond Collier, Arlington, VA 22209–2248.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call the National Security Education Program Office, at (703) 696–1991.

*Title: Associated Form; and OMB Number:* National Security Education Program (NSEP) Service Agreement for Scholarship and Fellowship Awards; DD Form 2752; OMB Number 0704–0368. National Security Education Program (NSEP) Service Agreement Report (SAR) for Scholarship and Fellowship Awards; DD Form 2753; OMB Number 0704–0368.

*Needs and Uses:* The Information collection is necessary to obtain verification that applicable scholarship and fellowship recipients are fulfilling service obligation mandated by the National Security Education Act of 1991, Title VIII of Pub. L. 102–183, as amended.

*Affected Public:* Individuals or households; federal government agencies.

*Annual Burden Hours:* 40.

*Number of Respondents:* 300.

*Responses per Respondent:* 2.

*Average Burden per Response:* 30 minutes.

*Frequency:* Semi Annual.

**SUPPLEMENTARY INFORMATION:**

## Summary of Information Collection

Respondents are recipients of undergraduate scholarship and graduate fellowship assistance from the National Security Education Program (NSEP), established by the National Security Education Act of 1991. DD Form 2752 is the Service Agreement that award recipients sign in order to acknowledge their understanding of their service obligation, and agree to the obligation. DD Form 2753 is the Service Agreement Report Form on which the student provides an account of his or her work toward fulfilling the service obligation, or justifies a request for deferment. The forms supporting this information collection requirement represent the sole means of establishing a written agreement of the service obligation and progress reports toward fulfilling this obligation between students who receive NSEP undergraduate scholarship and graduate fellowship awards, the program office, and the Department.

Dated: August 18, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–22289 Filed 8–21–97; 8:45 am]

BILLING CODE 5000–04–M

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Revised Non-Foreign Overseas Per Diem Rates

**AGENCY:** Per Diem, Travel and Transportation Allowance Committee, DOD.

**ACTION:** Notice of revised non-foreign overseas per diem rates.

**SUMMARY:** The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 197. This bulletin lists revisions in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. Bulletin Number 197 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

**EFFECTIVE DATE:** September 1, 1997.

**SUPPLEMENTARY INFORMATION:** This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 196. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

Billing code 5000–04–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

| LOCALITY | MAXIMUM LODGING AMOUNT (A) + | M&IE RATE (B) = | MAXIMUM PER DIEM RATE (C) | EFFECTIVE DATE |
|---|---|---|---|---|
| ALASKA: | | | | |
| ANCHORAGE [INCL NAV RES] | | | | |
| 05/01 -- 09/30 | 147 | 66 | 213 | 02/01/97 |
| 10/01 -- 04/30 | 81 | 60 | 141 | 02/01/97 |
| BARROW | 110 | 76 | 186 | 03/01/96 |
| BETHEL | 93 | 61 | 154 | 02/01/97 |
| CORDOVA | 74 | 72 | 146 | 02/01/97 |
| CRAIG | | | | |
| 05/01 -- 08/31 | 95 | 66 | 161 | 05/01/97 |
| 09/01 -- 04/30 | 79 | 64 | 143 | 05/01/97 |
| DELTA JUNCTION | 75 | 64 | 139 | 02/01/97 |
| DUTCH HARBOR-UNALASKA | 110 | 75 | 185 | 02/01/97 |
| EARECKSON AIR STATION | 75 | 60 | 135 | 02/01/97 |
| EIELSON AFB | | | | |
| 05/16 -- 09/14 | 121 | 60 | 181 | 02/01/97 |
| 09/15 -- 05/15 | 75 | 55 | 130 | 02/01/97 |
| ELMENDORF AFB | | | | |
| 05/01 -- 09/30 | 147 | 66 | 213 | 02/01/97 |
| 10/01 -- 04/30 | 81 | 60 | 141 | 02/01/97 |
| FAIRBANKS | | | | |
| 05/16 -- 09/14 | 121 | 60 | 181 | 02/01/97 |
| 09/15 -- 05/15 | 75 | 55 | 130 | 02/01/97 |
| FT. GREELY | 75 | 64 | 139 | 02/01/97 |
| FT. RICHARDSON | | | | |
| 05/01 -- 09/30 | 147 | 66 | 213 | 02/01/97 |
| 10/01 -- 04/30 | 81 | 60 | 141 | 02/01/97 |
| FT. WAINWRIGHT | | | | |
| 05/16 -- 09/14 | 121 | 60 | 181 | 02/01/97 |
| 09/15 -- 05/15 | 75 | 55 | 130 | 02/01/97 |
| GLENNALLEN | 86 | 53 | 139 | 08/01/97 |
| HOMER | | | | |
| 05/01 -- 09/30 | 116 | 64 | 180 | 02/01/97 |
| 10/01 -- 04/30 | 90 | 61 | 151 | 02/01/97 |
| JUNEAU | 89 | 79 | 168 | 02/01/97 |
| KENAI-SOLDOTNA | | | | |
| 05/01 -- 09/30 | 94 | 61 | 155 | 02/01/97 |
| 10/01 -- 04/30 | 74 | 59 | 133 | 02/01/97 |
| KENNICOTT | 149 | 84 | 233 | 08/01/97 |
| KETCHIKAN | | | | |
| 05/01 -- 09/30 | 99 | 77 | 176 | 02/01/97 |
| 10/01 -- 04/30 | 83 | 75 | 158 | 02/01/97 |

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

| LOCALITY | MAXIMUM LODGING AMOUNT (A) + | M&IE RATE (B) = | MAXIMUM PER DIEM RATE (C) | EFFECTIVE DATE |
|---|---|---|---|---|
| KING COVE | 85 | 69 | 154 | 03/01/96 |
| KING SALMON | 77 | 68 | 145 | 03/01/96 |
| KLAWOCK | | | | |
| 05/01 -- 08/31 | 95 | 66 | 161 | 05/01/97 |
| 09/01 -- 04/30 | 79 | 64 | 143 | 05/01/97 |
| KODIAK | 88 | 72 | 160 | 02/01/97 |
| KOTZEBUE | | | | |
| 05/16 -- 09/15 | 101 | 81 | 182 | 04/01/97 |
| 09/16 -- 05/15 | 90 | 80 | 170 | 04/01/97 |
| KULIS AGS | | | | |
| 05/01 -- 09/30 | 147 | 66 | 213 | 02/01/97 |
| 10/01 -- 04/30 | 81 | 60 | 141 | 02/01/97 |
| MCCARTHY | 149 | 84 | 233 | 08/01/97 |
| MURPHY DOME | | | | |
| 05/16 -- 09/14 | 121 | 60 | 181 | 02/01/97 |
| 09/15 -- 05/15 | 75 | 55 | 130 | 02/01/97 |
| NOME | 93 | 76 | 169 | 02/01/97 |
| PETERSBURG | 82 | 58 | 140 | 02/01/97 |
| SEWARD | | | | |
| 05/01 -- 09/15 | 114 | 74 | 188 | 02/01/97 |
| 09/16 -- 04/30 | 78 | 71 | 149 | 02/01/97 |
| SITKA-MT. EDGECOMBE | | | | |
| 04/01 -- 10/31 | 97 | 63 | 160 | 02/01/97 |
| 11/01 -- 03/31 | 86 | 62 | 148 | 02/01/97 |
| SKAGWAY | | | | |
| 05/01 -- 09/30 | 99 | 77 | 176 | 02/01/97 |
| 10/01 -- 04/30 | 83 | 75 | 158 | 02/01/97 |
| SPRUCE CAPE | 88 | 72 | 160 | 02/01/97 |
| TANANA | 93 | 76 | 169 | 02/01/97 |
| UMIAT | 125 | 107 | 232 | 08/01/97 |
| VALDEZ | | | | |
| 05/15 -- 09/15 | 105 | 65 | 170 | 02/01/97 |
| 09/16 -- 05/14 | 84 | 64 | 148 | 02/01/97 |
| WASILLA | 89 | 65 | 154 | 02/01/97 |
| WRANGELL | | | | |
| 05/01 -- 09/30 | 99 | 77 | 176 | 02/01/97 |
| 10/01 -- 04/30 | 83 | 75 | 158 | 02/01/97 |
| [OTHER] | 75 | 60 | 135 | 02/01/97 |
| AMERICAN SAMOA: | | | | |
| AMERICAN SAMOA | 73 | 53 | 126 | 03/01/97 |
| GUAM: | | | | |
| GUAM (INCL ALL MIL INSTAL) | 185 | 90 | 275 | 05/01/97 |

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

| LOCALITY | MAXIMUM LODGING AMOUNT (A) + | M&IE RATE (B) = | MAXIMUM PER DIEM RATE (C) | EFFECTIVE DATE |
|---|---|---|---|---|
| HAWAII: | | | | |
| CAMP H M SMITH | 110 | 61 | 171 | 07/01/97 |
| EASTPAC NAVAL COMP TELE AREA | 110 | 61 | 171 | 07/01/97 |
| FT. DERUSSEY | 110 | 61 | 171 | 07/01/97 |
| FT. SHAFTER | 110 | 61 | 171 | 07/01/97 |
| HICKAM AFB | 110 | 61 | 171 | 07/01/97 |
| HONOLULU NAVAL & MC RES CTR | 110 | 61 | 171 | 07/01/97 |
| ISLE OF HAWAII: HILO | 76 | 55 | 131 | 07/01/97 |
| ISLE OF HAWAII: OTHER | | | | |
| 04/01 -- 12/18 | 137 | 53 | 190 | 07/01/97 |
| 12/19 -- 03/31 | 150 | 54 | 204 | 07/01/97 |
| ISLE OF KAUAI | | | | |
| 05/01 -- 11/30 | 109 | 71 | 180 | 07/01/97 |
| 12/01 -- 04/30 | 133 | 73 | 206 | 07/01/97 |
| ISLE OF KURE | 60 | 41 | 101 | 07/01/97 |
| ISLE OF MAUI | | | | |
| 04/16 -- 12/14 | 100 | 58 | 158 | 07/01/97 |
| 12/15 -- 04/15 | 113 | 59 | 172 | 07/01/97 |
| ISLE OF OAHU | 110 | 61 | 171 | 07/01/97 |
| KANEOHE BAY MC BASE | 110 | 61 | 171 | 07/01/97 |
| KEKAHA PACIFIC MISSILE RANGE FAC | | | | |
| 05/01 -- 11/30 | 109 | 71 | 180 | 07/01/97 |
| 12/01 -- 04/30 | 133 | 73 | 206 | 07/01/97 |
| KILAUEA MILITARY CAMP | 76 | 55 | 131 | 07/01/97 |
| LULUALEI NAVAL MAGAZINE | 110 | 61 | 171 | 07/01/97 |
| NAS BARBERS POINT | 110 | 61 | 171 | 07/01/97 |
| PEARL HARBOR [INCL ALL MILITARY] | 110 | 61 | 171 | 07/01/97 |
| SCHOFIELD BARRACKS | 110 | 61 | 171 | 07/01/97 |
| WHEELER ARMY AIRFIELD | 110 | 61 | 171 | 07/01/97 |
| [OTHER] | 79 | 62 | 141 | 06/01/93 |
| JOHNSTON ATOLL: | | | | |
| JOHNSTON ATOLL | 13 | 9 | 22 | 07/01/97 |
| MIDWAY ISLANDS: | | | | |
| MIDWAY ISLANDS [INCL ALL MIL] | 60 | 41 | 101 | 07/01/97 |
| NORTHERN MARIANA ISLANDS: | | | | |
| ROTA | 105 | 71 | 176 | 05/01/97 |
| SAIPAN | 170 | 78 | 248 | 05/01/97 |
| [OTHER] | 61 | 53 | 114 | 05/01/97 |
| PUERTO RICO: | | | | |
| BAYAMON | | | | |
| 05/01 -- 11/28 | 105 | 65 | 170 | 09/01/97 |
| 11/29 -- 04/30 | 134 | 68 | 202 | 09/01/97 |

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

| LOCALITY | MAXIMUM LODGING AMOUNT (A) + | M&IE RATE (B) = | MAXIMUM PER DIEM RATE (C) | EFFECTIVE DATE |
|---|---|---|---|---|
| CAROLINA | | | | |
| 05/01 -- 11/28 | 105 | 65 | 170 | 09/01/97 |
| 11/29 -- 04/30 | 134 | 68 | 202 | 09/01/97 |
| DORADO | | | | |
| 04/01 -- 12/19 | 196 | 68 | 264 | 09/01/97 |
| 12/20 -- 03/31 | 354 | 83 | 437 | 09/01/97 |
| FAJARDO [INCL CEIBA, LUQUILLO & HUMACAO] | | | | |
| 05/01 -- 11/23 | 70 | 64 | 134 | 10/01/96 |
| 11/24 -- 04/30 | 114 | 68 | 182 | 10/01/96 |
| FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO] | | | | |
| 05/01 -- 11/28 | 105 | 65 | 170 | 09/01/97 |
| 11/29 -- 04/30 | 134 | 68 | 202 | 09/01/97 |
| LUIS MUNOZ MARIN IAP AGS | | | | |
| 05/01 -- 11/28 | 105 | 65 | 170 | 09/01/97 |
| 11/29 -- 04/30 | 134 | 68 | 202 | 09/01/97 |
| MAYAGUEZ | 74 | 58 | 132 | 09/01/97 |
| PONCE | 99 | 58 | 157 | 09/01/97 |
| ROOSEVELT ROADS & NAV STA | | | | |
| 05/01 -- 11/23 | 70 | 64 | 134 | 10/01/96 |
| 11/24 -- 04/30 | 114 | 68 | 182 | 10/01/96 |
| SABANA SECA [INCL ALL MILITARY] | | | | |
| 05/01 -- 11/28 | 105 | 65 | 170 | 09/01/97 |
| 11/29 -- 04/30 | 134 | 68 | 202 | 09/01/97 |
| SAN JUAN & NAV RES STA | | | | |
| 05/01 -- 11/28 | 105 | 65 | 170 | 09/01/97 |
| 11/29 -- 04/30 | 134 | 68 | 202 | 09/01/97 |
| [OTHER] | 80 | 55 | 135 | 09/01/97 |
| VIRGIN ISLANDS (U.S.): | | | | |
| ST. CROIX | | | | |
| 04/15 -- 12/14 | 109 | 80 | 189 | 07/01/97 |
| 12/15 -- 04/14 | 129 | 82 | 211 | 07/01/97 |
| ST. JOHN | | | | |
| 06/01 -- 12/15 | 228 | 79 | 307 | 07/01/97 |
| 12/16 -- 05/31 | 344 | 91 | 435 | 07/01/97 |
| ST. THOMAS | | | | |
| 04/15 -- 12/18 | 215 | 76 | 291 | 07/01/97 |
| 12/19 -- 04/14 | 322 | 87 | 409 | 07/01/97 |
| WAKE ISLAND: | | | | |
| WAKE ISLAND | 40 | 35 | 75 | 10/01/96 |

Dated:

L.M. BYNUM, Alternate OSD Federal Register Liaison Officer
Department of Defense
August 14, 1997



[FR Doc. 97–22284 Filed 8–21–97; 8:45 am]
BILLING CODE 5000–04–C

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. NJ97–14–000]**

### East Kentucky Power Cooperative; Notice of Filing

August 18, 1997.

On July 15, 1997, East Kentucky Power Cooperative (EKPC), a non-public utility operating in central and eastern Kentucky, submitted for filing an Open Access Transmission Tariff and a request for declaratory order which would find that EKPC's Transmission Tariff meets the Federal Energy Regulatory Commission's (Commission's) comparability standards and is therefore an acceptable reciprocity tariff pursuant to the provisions of Order No. 888.

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 and protest should be filed on or before August 29, 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22319 Filed 8–21–97; 8:45]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 1218]**

### Georgia Power Company; Notice of Availability of Study Results and Request for Additional Studies

August 18, 1997.

Georgia Power Company is currently engaged in the process of obtaining from the Federal Energy Regulatory Commission (Commission) a new license for the Flint River Hydroelectric Project (FERC No. 1218). The current license for the project is due to expire on September 30, 2001. The project is located on the Flint River, near the City of Albany, in Dougherty and Lee Counties, Georgia. Under the Commission's regulations, an application for license for the project must be filed by September 30, 1999. Georgia Power Company is managing relicensing activities in cooperation with a team of federal and state resource agencies, conservation groups, and local governments (the Consultation Team).

Pursuant to the Energy Policy Act of 1992, and the Commission's regulations, Georgia Power Company intends to prepare a Draft Environmental Assessment (DEA) as part of the license application, to be filed with the Commission, for the project. A public scoping meeting was held on September 12, 1995, to identify the scope of environmental issues that should be analyzed in the DEA.

Based on information contained in Scoping Document I, and following receipt of additional informational from resource agencies and other interested parties, Georgia Power Company prepared and circulated Scoping Document II. Study plans, designed to address the environmental concerns raised during the scoping process, were subsequently prepared by Georgia Power Company and their environmental consultant. The study plans were then finalized, and studies were undertaken from late Spring 1996 through late Spring 1997. During the field studies, Georgia Power Company and their environmental consultant worked closely with the participating agencies to coordinate and refine the studies. During the period from August 15, 1997 until October 14, 1997, these study reports will be available for public review in Georgia Power Company's public library at its offices at 333 Piedmont Avenue in Atlanta Georgia. The study reports will also be available in the Commission's Public Reference Room at 888 First Street, NE., in Washington, DC. The public is invited to review these documents and to file comments on the adequacy of these studies in addressing issues raised during the scoping process. Comments on these studies and requests for any additional studies are due by October 14, 1997.

Because Section 4.32(b)(7) of the Commission's Regulations has been previously waived, we are requesting that if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the project on its merit, the resource agency, Indian tribe, or person must file a request for a study with the Secretary of the Commission at 888 First Street, NE., Washington, DC 20426 by October 14, 1997, and serve a copy of the request on Mr. Mike Phillips, Georgia Power Company, Bin 20020, 333 Piedmont Avenue, Atlanta, GA 30308.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22318 Filed 8–21–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP97–697–000]**

### K N Interstate Gas Transmission Company; Notice of Request Under Blanket Authorization

August 18, 1997.

Take notice that on August 15, 1997, K N Interstate Gas Transmission Company (KNI), Post Office Box 281304, Lakewood, Colorado 80228–8304, filed a prior notice request with the Commission in Docket No. CP97–697–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to install and operate twelve new delivery taps and appurtenant facilities in Converse County, Wyoming, under KNI's blanket certificates issued in Docket Nos. CP83–140–000, CP83–140–001, and CP89–1043–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

KNI proposes to install and operate 12 delivery taps under a transportation agreement with K N Energy, Inc. (K N Energy). KNI states that it would install one tap on an existing KNI lateral and eleven taps on KNI's recently certificated Pony Express pipeline, in order to relocate 12 taps on an existing 12-inch diameter transmission pipeline being converted to unprocessed gas service. KNI states that it would place the Pony Express pipeline in service on October 1, 1997, to serve K N Energy's direct retail sales customers. KNI states that it would deliver up to 36 Mcf of natural gas on a peak day and up to 5,507 Mcf of natural gas annually via these 12 new delivery taps. KNI also states that it would spend approximately $30,000 to install all 12 delivery taps.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, 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

NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, 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 NGA.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22324 Filed 8–21–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER97–3557–000]**

## Puget Sound Energy, Inc.; Notice of Filing

August 18, 1997.

Take notice that on July 28, 1997, Puget Sound Energy, 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 285.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 29, 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22321 Filed 8–21–97; 8:45am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP90–119–020]**

## Texas Eastern Transmission Corporation; Notice of Correction Filing

August 18, 1997.

Take notice that on August 13, 1997, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, substitute revised tariff sheets with a proposed effective date of September 1, 1997 as follows:

Sub Thirteenth Revised Sheet No. 46
Sub Fifth Revised Sheet No. 47
Sub Ninth Revised Sheet No. 73

Texas Eastern asserts that the purpose of the above substitute tariff sheets is to correct the Rate Schedule FSS–1 Reservation Charge in tariff sheets filed in Docket No. RP90–119–019 on August 1, 1997 to remove from rates costs associated with the merger between Panhandle Eastern Corporation and Texas Eastern. Texas Eastern states that in the tariff sheets filed on August 1, 1997 the Rate Schedule FSS–1 Reservation Charge was misstated as a result of a transposition error. Texas Eastern states that the above substitute tariff sheets reflect the correction of the FSS–1 Reservation Charge.

Texas Eastern states that copies of this filing were served on firm customers of Texas Eastern, interested state commissions, current interruptible customers and all parties to the S&A.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22316 Filed 8–21–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER97–3233–000]**

## The Toledo Edison Company; Notice of Filing

August 18, 1997.

Take notice that on August 8, 1997, The Toledo 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 285.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 29, 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22322 Filed 8–21–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER97–1892–000]**

## The Toledo Edison Company; Notice of Filing

August 18, 1997.

Take notice that on July 28, 1997, The Toledo Edison Company tendered for filing a Certificate of Concurrence 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 285.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 29, 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22323 Filed 8–21–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. GT97–61–000]**

## Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

August 18, 1997.

Take notice that on August 8, 1997, Transcontinental Gas Pipe Line Corporation (Transco), filed a report reflecting the flow through of refunds received from CNG Transmission Corporation (CNG).

On July 9, 1997, in accordance with Section 4 of its Rate Schedule SS–1, Transco states that it refunded to its SS–1 customers $39,634.04 resulting from the final resolution of North Penn Gas Company's Docket No. RP95–304 Take-or-Pay Refund. The refund covers the period from February 1994 to January 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protest should be filed on or before August 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 in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22320 Filed 8–21–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER97–3901–000, et al.]**

## Southwestern Public Service Company, et al.; Electric Rate and Corporate Regulation Filings

August 14, 1997.

Take notice that the following filings have been made with the Commission:

### 1. Southwestern Public Service Company

[Docket No. ER97–3901–000]

Take notice that on July 28, 1997, Southwestern Public Service Company (SPS), submitted an Agreement between SPS and Farmers' Electric Cooperative, Inc. (Farmers'), dated March 27, 1997, relating to and amending the rates, terms, and conditions of SPS's wholesale requirements service to Farmers'.

*Comment date:* August 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

### 2. Vastar Resources, Inc.; Vastar Gas Marketing, Inc.; Vastar Power Marketing, Inc.; Vastar Energy; SEI Holdings, Inc.; Southern Energy North America, Inc.; Southern Energy Trading and Marketing, Inc.; SC Ashwood Holdings, Inc.; SC Energy Ventures, Inc.; Southern Company Energy Marketing L.P.; Southern Company Energy Marketing G.P., L.L.C.

[Docket No. EC97–49–000]

Take notice that on August 8, 1997, the above-captioned parties (Applicants) filed an application under Section 203 of the Federal Power Act for the transfer of contracts for the sale of electric energy at wholesale and other jurisdictional actions in conjunction with the formation of a joint venture for the marketing of natural gas and electric energy at wholesale.

*Comment date:* October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

### 3. Additional Signatory to PJM Interconnection, L.L.C. Operating Agreement

[Docket No. ER97–3900–000]

Take notice that on July 28, 1997, the PJM Interconnection, L.L.C. (PJM) filed, on behalf of the Members of the LLC, membership applications of Detroit Edison and New England Power Company. PJM requests an effective date of July 26, 1997.

*Comment date:* August 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

### 4. Southwestern Public Service Company

[Docket No. ER97–3902–000]

Take notice that on July 28, 1997, Southwestern Public Service Company (SPS), submitted an Agreement between SPS and Roosevelt County Cooperative, Inc. (Roosevelt), dated January 28, 1997, relating to and amending the rates, terms, and conditions of SPS's wholesale requirements service to Roosevelt.

*Comment date:* August 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

### 5. Southwestern Public Service Company

[Docket No. ER97–3903–000]

Take notice that on July 28, 1997, Southwestern Public Service Company (SPS), submitted an Agreement between SPS and New Corp Resources, Inc. (New Corp), dated June 11, 1997, relating to and amending the rates, terms, and conditions of SPS's wholesale requirements service to New Corp.

*Comment date:* August 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

### 6. Southwestern Public Service Company

[Docket No. ER97–3904–000]

Take notice that on July 28, 1997, Southwestern Public Service Company (SPS), submitted an Agreement between SPS and Central Valley Electric Cooperative, Inc. (Central Valley), dated March 31, 1997, relating to and amending the rates, terms, and conditions of SPS's wholesale requirements service to Central Valley.

*Comment date:* August 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

### 7. Southwestern Public Service Company

[Docket No. ER97–3905–000]

Take notice that on July 28, 1997, Southwestern Public Service Company (SPS), submitted an Agreement between SPS and Lea County Electric Cooperative, Inc. (Lea County), dated February 20, 1997, relating to and amending the rates, terms, and conditions of SPS's wholesale requirements service to Lea County.

*Comment date:* August 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

### 8. Southwestern Public Service Company

[Docket No. ER97–3906–000]

Take notice that on July 28, 1997, Southwestern Public Service Company

(SPS), submitted an Agreement between SPS and Lyntegar Electric Cooperative, Inc. (Lyntegar), dated January 21, 1997, relating to and amending the rates, terms, and conditions of SPS's wholesale requirements service to Lyntegar.

*Comment date:* August 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

**9. Louisville Gas and Electric Company**

[Docket No. ER97–3907–000]

Take notice that on July 28, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-to-Point Transmission Service Agreement between LG&E and Constellation Power Source, Inc. under LG&E's Open Access Transmission Tariff.

*Comment date:* August 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

**10. Louisville Gas and Electric Company**

[Docket No. ER97–3908–000]

Take notice that on July 28, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing of its obligation to file the rates and agreements for wholesale transactions made pursuant to its market-based Generation Sales Service (GSS) Tariff.

*Comment date:* August 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

**11. Entergy Services, Inc.**

[Docket No. ER97–3910–000]

Take notice that on July 28, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Illinois Power Company for the sale of power under Entergy Services' Rate Schedule SP.

*Comment date:* August 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

**12. Entergy Services, Inc.**

[Docket No. ER97–3911–000]

Take notice that on July 28, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and the Energy Authority, Inc., for sale of power under Entergy Services' Rate Schedule SP.

*Comment date:* August 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

**13. Interstate Power Company**

[Docket No. ER97–3912–000]

Take notice that on July 28, 1997, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and Cenerprise, Inc. Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to Cenerprise, Inc.

*Comment date:* August 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

**14. Entergy Services, Inc.**

[Docket No. ER97–3913–000]

Take notice that on July 28, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Vastar Power Marketing, Inc.

*Comment date:* August 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

**15. Commonwealth Electric Company Cambridge Electric Light Co.**

[Docket No. ER97–3914–000]

Take notice that on July 28, 1997, Commonwealth Electric Company (Commonwealth) and Cambridge Electric Light Company (Cambridge), collectively referred to as the Companies, tendered for filing with the Federal Energy Regulatory Commission their quarterly reports under Commonwealth's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 7) and Cambridge's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 9) for the period of April 1, 1997 to June 30, 1997.

*Comment date:* August 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

**16. Entergy Services, Inc.**

[Docket No. ER97–3915–000]

Take notice that on July 28, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and American Electric Power Service Corporation for the sale of power under Entergy Services' Rate Schedule SP.

*Comment date:* August 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

**17. Entergy Services, Inc.**

[Docket No. ER97–3916–000]

Take notice that on July 28, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Commonwealth Edison Company for the sale of power under Entergy Services' Rate Schedule SP.

*Comment date:* August 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

**18. Entergy Services, Inc.**

[Docket No. ER97–3917–000]

Take notice that on July 28, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and NP Energy Inc.

*Comment date:* August 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

**19. Central Illinois Public Service Company**

[Docket No. ER97–3918–000]

Take notice that on July 28, 1997, Central Illinois Public Service Company (CIPS), submitted two non-firm point-to-point service agreements, dated July 17, 1997 and July 21, 1997, establishing the

following as customers under the terms of CIPS' Open Access Transmission Tariff: EnerZ Corporation and New York State Electric & Gas Corporation. CIPS also submitted for filing an executed service agreement with Enron Power Marketing, Inc., to substitute for a previously filed unexecuted service agreement.

CIPS requests an effective date of July 21, 1997 for the service agreements. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served on the three customers and the Illinois Commerce Commission.

*Comment date:* August 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

**20. Central Illinois Public Service Company**

[Docket No. ER97–3919–000]

Take notice that on July 28, 1997, Central Illinois Public Service Company (CIPS), submitted a Service Agreement, dated July 21, 1997, establishing EnerZ Corporation as a customer under the terms of CIPS' Coordination Sales Tariff CST–1 (CST–1 Tariff).

CIPS requests an effective date of July 21, 1997 for the service agreement and the revised Index of Customers. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon EnerZ Corporation and the Illinois Commerce Commission.

*Comment date:* August 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

**21. MidAmerican Energy Company**

[Docket No. ER97–3921–000]

Take notice that on July 28, 1997, MidAmerican Energy Company (MidAmerican) filed with the Commission a Notice of Cancellation pursuant to § 35.15 of the Commission's Regulations. MidAmerican states that the rate schedules to be canceled effective as of 11:59 p.m. on April 30, 1997 are as follows:

1. Full Requirements Power Agreement dated July 27, 1987, between Iowa Public Service Company (a predecessor company of MidAmerican) and City of Hudson, Iowa. This Full Requirements Power Agreement has been designated as MidAmerican Rate Schedule Electric Tariff No. 7, Service Agreement No. 5.

MidAmerican requests a waiver of § 35.15 to the extent that this Notice of Cancellation has not been filed within the time required by such section. MidAmerican states that this Notice of Cancellation was not filed earlier because the termination of the agreement identified in the Notice of Cancellation was subject to the Commission's acceptance for filing of other contracts submitted for filing in Docket No. ER97–2902–000 which acceptances were issued on June 20, 1997, effective on May 1, 1997. The new agreement, which supplants the agreement being canceled, is entitled ''Short Term Wholesale Requirements Power Sales Agreement'' and has been designated as MidAmerican Rate Schedule Electric Tariff No. 5, Service Agreement No. 13.

MidAmerican has mailed a copy of this filing to City of Hudson, IA, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

*Comment date:* August 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

**22. In the matter of Orange and Rockland Utilities, Inc.**

[Docket No. ES97–44–000]

Take notice that on August 4, 1997, Orange and Rockland Utilities, Inc., filed an application under Section 204 of the Federal Power Act seeking authorization to issue not more than $150.0 million of unsecured obligations with a final maturity date no later than December 31, 1999.

*Comment date:* September 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

**23. South Carolina Electric & Gas Company**

[Docket No. ER97–3920–000]

Take notice that on July 28, 1997, South Carolina Electric & Gas Company (SCE&G), submitted service agreements establishing Peco Energy Company-Power Team (PECO) and Southern Energy Trading and Marketing, Inc. (SETM) as customers under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreements. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon PECO, SETM, and the South Carolina Public Service Commission.

*Comment date:* August 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraph**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22295 Filed 8–21–97; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER97–2424–001, et al.]**

### Western Resources, Inc., et al., Electric Rate and Corporate Regulation Filings

August 13, 1997.

Take notice that the following filings have been made with the Commission:

**1. Western Resources, Inc.**

[Docket ER97–2424–001]

Take notice that on July 15, 1997, Western Resources, Inc., tendered for filing its refund report in the above-referenced docket.

*Comment date:* August 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

**2. Delmarva Power & Light Company and Pennsylvania Power & Light Company**

[Docket No. ER97–2878–000]

Take notice that on August 5, 1997, Delmarva Power & Light Company and Pennsylvania Power & Light Company tendered for filing an amendment in the above-referenced docket.

*Comment date:* August 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

**3. American Electric Power Company; Columbus Southern Power Company**

[Docket ER97–3213–000]

Take notice that on July 10, 1997, Columbus Southern Power Company (CSP) tendered for filing with the Commission a Facilities Operations Agreement and a Facilities Service Agreement dated June 3, 1997, between CSP, Buckeye Power, Inc. (Buckeye) and Guernsey-Muskingum Electric

Cooperative, Inc. (GME). GME is an Ohio electricity cooperative and a member of Buckeye Power, Inc.

GME has requested CSP provide a new delivery point pursuant to provisions of the Power Delivery Agreement between CSP, Buckeye, The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Monongahela Power Company, Ohio Power Company and Toledo Edison Company, dated January 1968. CSP requests an effective date of June 15, 1997, for the tendered agreements.

CSP states that copies of its filing were served upon the Guernsey-Muskingum Electric Cooperative, Inc. Buckeye Power, Inc., R&F Coal company and the Public Utilities Commission of Ohio.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**4. Wisconsin Electric Power Company**

[Docket No. ER97–3299–000]

Take notice that on July 25, 1997, Wisconsin Electric Power Company tendered for filing an amendment in the above-referenced proceeding. The amendment contains information requested by the FERC Staff that supports the use of a twelve-month snap-shot method for calculating the Load Ratio Share of a network transmission service customer. The amendment also contains information supporting the confirmation requirement for short term firm point-to-point transmission service.

Wisconsin Electric renews its original requested effective date of June 12, 1997.

Copies of the filing have been served on all transmission customers, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**5. Northern States Power Company (Minnesota Company)**

[Docket No. ER97–3687–000]

Take notice that on August 4, 1997, Northern States Power Company (Minnesota) (NSP) tendered an amendment to this docket.

In accordance with NSP's original filing, NSP requests the Commission accept this amendment herein and make it effective the same date as the original filing, July 11, 1997.

*Comment date:* August 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

**6. Florida Power & Light Company**

[Docket No. ER97–3859–000]

On July 25, 1997, Florida Power & Light Company filed a Service Agreement with The Energy Authority for service pursuant to Tariff No. 1 for Sales of Power and Energy by Florida Power & Light. FPL requests that the Service Agreement be made effective on July 25, 1997.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**7. Pacific Gas and Electric Company**

[Docket No. ER97–3860–000]

Take notice that on July 25, 1997, Pacific Gas and Electric Company (PG&E) tendered for filing; 1) an agreement dated as of May 23, 1997, by and between PG&E and the Powerex entitled Service Agreement for Firm Point-to-Point Transmission Service (Service Agreement); and 2) a request for termination of this Service Agreement.

The Service Agreement was entered into for the purpose of firm point-to-point transmission service for 50 MW of power delivered to Southern California Edison at PG&E's Midway Substation. The effective date of termination is either the requested date shown below or such other date the Commission deems appropriate for termination.

| Service agreement date | Term | Requested effective date for termination |
|---|---|---|
| Service Agreement under FERC Electric Tariff, Original Volume No. 3. | July 1, 1997 through September 30, 1997 ..... | September 30, 1997. |

Copies of this filing have been served upon the California Public Utilities Commission and Powerex.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**8. Pennsylvania Power & Light Company**

[Docket No. ER97–3861–000]

Take notice that on July 25, 1997, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated July 15, 1997 with Southern Company Services, Inc. (Southern) under PP&L's FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds Southern as an eligible customer under the Tariff.

PP&L requests an effective date of July 25, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Southern and to the Pennsylvania Public Utility Commission.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**9. Pennsylvania Power & Light Company**

[Docket No. ER97–3862–000]

Take notice that on July 25, 1997, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated July 18, 1997 with Kentucky Utilities Company (Kentucky) under PP&L's FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds Kentucky as an eligible customer under the Tariff.

PP&L requests an effective date of July 25, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Kentucky and to the Pennsylvania Public Utility Commission.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**10. Cinergy Services, Inc.**

[Docket No. ER97–3863–000]

Take notice that on July 25, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and American Municipal Power-Ohio, Inc. (AMPO).

Cinergy and AMPO are requesting an effective date of June 25, 1997.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**11. Cinergy Services, Inc.**

[Docket No. ER97–3864–000]

Take notice that on July 25, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff)

entered into between Cinergy and SCAN Energy Marketing, Inc., (SCANA).

Cinergy and SCANA are requesting an effective date of July 1, 1997.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**12. Union Electric Company**

[Docket No. ER97–3865–000]

Take notice that on July 25, 1997, Union Electric Company (UE) tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between Koch Energy Trading, Inc. (Koch) and UE. UE asserts that the purpose of the Agreement is to permit UE to provide transmission service to Koch pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**13. Cinergy Services, Inc.**

[Docket No. ER97–3866–000]

Take notice that on July 25, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Koch Energy Trading, Inc., (Koch).

Cinergy and Koch are requesting an effective date of June 25, 1997.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**14. Cinergy Services, Inc.**

[Docket No. ER97–3867–000]

Take notice that on July 25, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and NESI Power Marketing, Inc., (NESI).

Cinergy and NESI are requesting an effective date of July 15, 1997.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**15. Cinergy Services, Inc.**

[Docket No. ER97–3868–000]

Take notice that on July 25, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Sonat Power Marketing L.P. (Sonat).

Cinergy and Sonat are requesting an effective date of July 15, 1997.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**16. Cinergy Services, Inc.**

[Docket No. ER97–3869–000]

Take notice that on July 25, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Minnesota Power & Light Company (MP&L).

Cinergy and MP&L are requesting an effective date of July 15, 1997.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**17. Cinergy Services, Inc.**

[Docket No. ER97–3870–000]

Take notice that on July 25, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Plum Street Energy Marketing, Inc., (PSEM).

Cinergy and PSEM are requesting an effective date of July 24, 1997.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**18. Niagara Mohawk Power Corporation**

[Docket No. ER97–3896–000]

Take notice that on July 28, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and the New York Power Authority to serve 16.9 MW of New York Power Authority power to Occidental Chemicals. This Transmission Service Agreement specifies that the New York Power Authority has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and the New York Power Authority to enter into separately scheduled transactions under which NMPC will provide transmission service for the New York Power Authority as the parties may mutually agree.

NMPC requests an effective date of May 23, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and the New York Power Authority.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**19. Niagara Mohawk Power Corporation**

[Docket No. ER97–3897–000]

Take notice that on July 28, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and the New York Power Authority to serve 5 MW of New York Power Authority power to Owens Corning. This Transmission Service Agreement specifies that the New York Power Authority has signed onto and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and the New York Power Authority to enter into separately scheduled transactions under which NMPC will provide transmission service for the New York Power Authority as the parties may mutually agree.

NMPC requests an effective date of May 23, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and the New York Power Authority.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**20. Niagara Mohawk Power**

[Docket No. ER97–3898–000]

Take notice that on July 28, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and the New York Power Authority to serve 9.1 MW of New York Power Authority power to Cascades Niagara Falls, Inc. This Transmission Service Agreement specifies that the New York Power Authority has signed onto and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and the New York Power Authority to enter into separately scheduled transactions under which NMPC will provide transmission service for the New York Power Authority as the parties may mutually agree.

NMPC requests an effective date of March 1, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service

Commission and the New York Power Authority.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**21. Southern Indiana Gas and Electric Company**

[Docket No. ER97–3899–000]

Take notice that on July 28, 1997, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing summary information on transactions that occurred during the period March 31, 1997 through June 30, 1997, pursuant to its Market Based Rate Sales Tariff accepted by the Commission in Docket No. ER96–2734–000.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**22. Niagara Mohawk Power Corporation**

[Docket No. ER97–3895–000]

Take notice that on July 28, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and the New York Power Authority to serve 7 MW of New York Power Authority power to Occidental Chemicals. This Transmission Service Agreement specifies that the New York Power Authority has signed onto and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and the New York Power Authority to enter into separately scheduled transactions under which NMPC will provide transmission service for the New York Power Authority as the parties may mutually agree.

NMPC requests an effective date of May 23, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and the New York Power Authority.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**23. Niagara Mohawk Power Corporation**

[Docket No. ER97–3894–000]

Take notice that on July 28, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and the New York Power Authority to serve 13 MW of New York Power Authority power to Air Products. This Transmission Service Agreement specifies that the New York Power Authority has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and the New York Power Authority to enter into separately scheduled transactions under which NMPC will provide transmission service for the New York Power Authority as the parties may mutually agree.

NMPC requests an effective date of May 23, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and the New York Power Authority.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**24. Niagara Mohawk Power Corporation**

[Docket No. ER97–3893–000]

Take notice that on July 28, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and the New York Power Authority to serve 14 MW of New York Power Authority power to BOC Gases-Selkirk. This Transmission Service Agreement specifies that the New York Power Authority has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and the New York Power Authority to enter into separately scheduled transactions under which NMPC will provide transmission service for the New York Power Authority as the parties may mutually agree.

NMPC requests an effective date of May 23, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and the New York Power Authority.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**25. Niagara Mohawk Power Corporation**

[Docket No. ER97–3892–000]

Take notice that on July 28, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and the New York Power Authority to serve 2.55 MW of New York Power Authority power to BOC Gases-Buffalo. This Transmission Service Agreement specifies that the New York Power Authority has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and the New York Power Authority to enter into separately scheduled transactions under which NMPC will provide transmission service for the New York Power Authority as the parties may mutually agree.

NMPC requests an effective date of May 23, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and the New York Power Authority.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**26. Southern Company Services, Inc.**

[Docket No. ER97–3889–000]

Take notice that on July 28, 1997, Southern Company Services, Inc. (SCSI), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed two (2) service agreements under Southern Companies' Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) with the following entity: (I) Pennsylvania Power and Light Company. SCSI states that the service agreements will enable Southern Companies to engage in short-term market-based rate transactions with these entities.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**27. Great Bay Power Corporation**

[Docket No. ER97–3890–000]

Take notice that on July 28, 1997, Great Bay Power Corporation, tendered for filing a summary of activity for the quarter ending June 30, 1997.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**28. Portland General Electric Company**

[Docket No. ER97–3891–000]

Take notice that on July 28, 1997, Portland General Electric Company (PGE), tendered for filing under FERC Electric Tariff, Second Revised Volume No. 2, an executed Service Agreement with Constellation Power Source, Inc.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL93–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreement to become effective July 15, 1997.

A copy of this filing was caused to be served upon Constellation Power Source, Inc., as noted in the filing letter.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**29. The Green Power Connection, Inc.**

[Docket No. ER97–3888–000]

Take notice that on July 28, 1997, The Green Power Connection, Inc. (TGPC), petitioned the Commission for acceptance of TGPC Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

TGPC intends to engage in wholesale electric power and energy purchases and sales as a marketer. TGPC is not in the business of generating or transmitting electric power. TGPC is a wholly-owned subsidiary of Vulcan Power Company, which owns and plans to develop geothermal power sites in Oregon, Idaho, and California.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**30. Cinergy Services, Inc.**

[Docket ER97–3871–000]

Take notice that on July 25, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Kansas City Power and Light (KCPL).

Cinergy and KCPL are requesting an effective date of June 26, 1997.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**31. Cinergy Services, Inc.**

[Docket ER97–3872–000]

Take notice that on July 25, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and NP Energy, Inc. (NP).

Cinergy and NP are requesting an effective date of July 1, 1997.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**32. Cinergy Services, Inc.**

[Docket ER97–3873–000]

Take notice that on July 25, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and East Kentucky Power Cooperative, Inc., (East Kentucky).

Cinergy and East Kentucky are requesting an effective date of July 1, 1997.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**33. Maine Public Service Company**

[Docket No. ER97–3874–000]

Take notice that on July 25, 1997, Maine Public Service Company (Maine Public) filed an executed Service Agreement with Tractebel Energy Marketing, Inc.

*Comment date:* May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

**34. Maine Public Service Company**

[Docket No. ER97–3875–000]

Take notice that on July 25, 1997, Maine Public Service Company (Maine Public) filed an executed Service Agreement with CMS Marketing, Services and Trading Company.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**35. Florida Power Corporation**

[Docket No. ER97–3876–000]

Take notice that on July 25, 1997, Florida Power Corporation tendered for filing its quarterly report summary of short-term transactions that occurred under its Market-based Wholesale Power Sales Tariff during the period April 30, 1997 through June 30, 1997.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**36. Portland General Electric Company**

[Docket ER97–3877–000]

Take notice that on July 25, 1997, Portland General Electric Company (PGE) tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), an executed Service Agreement for Non-Firm Point-to-Point Transmission Service with Avista Energy.

Pursuant to 18 CFR Section 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Service Agreement to become effective July 21, 1997.

A copy of this filing was caused to be served upon Avista Energy as noted in the filing letter.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**37. Portland General Electric Company**

[Docket ER97–3878–000]

Take notice that on July 25, 1997, Portland General Electric Company (PGE) tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), an executed Service Agreement for Non-Firm Point-to-Point Transmission Service with Western Resources.

Pursuant to 18 CFR Section 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Service Agreement to become effective July 21, 1997.

A copy of this filing was caused to be served upon Western Resources as noted in the filing letter.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**38. Cenerprise, Inc.**

[Docket No. ER97–3879–000]

Take notice that on July 25, 1997, Cenerprise, Inc. (Cenerprise), filed pursuant to 205 of the Federal Power Act, Part 35 of the Commission's Regulations, and the Commission's Rules of Practice and Procedure, for an order approving certain changes to Cenerprise's First Revised Rate Schedule FERC No. 1. Cenerprise states that the purpose of this filing is to remove the provision defining Wisconsin Electric Power Corporation as an affiliate for purposes of transacting at market rates. Cenerprise has

requested an effective date of September 23, 1997.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**39. Southern California Edison Company**

[Docket No. ER97–3880–000]

Take notice, that on July 25, 1997, Southern California Edison Company (Edison), tendered for filing changes in rates for transmission service as embodied in Edison's agreements with the following entities:

| Entity | FERC rate schedule number |
|---|---|
| 1. City of Anaheim | 130, 246.6, 246.8, 246.13, 246.29, 246.32, 246.33, 246.36, 246.43, 246.47. |
| 2. City of Azusa | 160, 247.4, 247.6, 247.8, 247.24, 247.29, 247.39. |
| 3. City of Banning | 159, 248.5, 248.7, 248.9, 248.24, 248.29, 248.37, 248.38. |
| 4. City of Colton | 162, 249.4, 249.6, 249.8, 249.24, 249.29. |
| 5. City of Riverside | 129, 250.6, 250.8, 250.10, 250.15, 250.21, 250.27, 250.30, 250.35, 250.41, 250.44, 250.46, 250.50. |
| 6. City of Vernon | 149, 154.24, 172, 207, 272, 276. |
| 7. Arizona Electric Power Cooperative | 131, 161. |
| 8. Arizona Public Service Company | 185, 348. |
| 9. California Department of Water Resources | 38, 112, 113, 181, 342. |
| 10. City of Burbank | 166. |
| 11. City of Glendale | 143. |
| 12. City of Los Angeles Department of Water and Power | 102, 118, 140, 141, 163, 188, 219. |
| 13. City of Pasadena | 158. |
| 14. Coastal Electric Services Company | 347. |
| 15. Imperial Irrigation District | 259, 268. |
| 16. Metropolitan Water District of Southern California | 292. |
| 17. M-S-R Public Power Agency | 153, 339. |
| 18. Northern California Power Agency | 240. |
| 19. Pacific Gas and Electric Company | 117, 147, 256, 318. |
| 20. PacifiCorp | 275. |
| 21. Rainbow Energy Marketing Corporation | 346. |
| 22. San Diego Gas & Electric Company | 151. |
| 23. Southern California Water Company | 349.3. |
| 24. Western Area Power Administration | 120. |

Pursuant to these rate schedules, the rate changes result from a change in the rate of return from 9.55% to 9.49% authorized by the California Public Utilities Commission, effective January 1, 1997.

Edison is requesting waiver of the 60-day prior notice requirement, and except as noted in Exhibit C, requests that the Commission assign an effective date of January 1, 1997, to the changes in rates for transmission service.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**40. Northeast Utilities Service Company**

[Docket No. ER97–3881–000]

Take notice that on July 25, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with the Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company (d/b/a GPU Energy) under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company (d/b/a GPU Energy).

NUSCO requests that the Service Agreement become effective July 11, 1997.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**41. Wisconsin Public Service Corporation**

[Docket No. ER97–3882–000]

Take notice that on July 25, 1997, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and PECO Energy Company—Power Team, provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**42. Idaho Power Company**

[Docket No. ER97–3883–000]

Take notice that on July 25, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements under Idaho Power Company FERC Electric Tariff No. 6, Market Rate Power Sales Tariff, between Idaho Power Company and Portland General Electric Company.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**43. Wisconsin Electric Power Company**

[Docket No. ER97–3884–000]

Take notice that on July 25, 1997, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement between itself and Constellation Power Source (CPS). The agreement establishes CPS as a customer under Wisconsin Electric's Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2).

Wisconsin Electric respectfully requests an effective date of August 1, 1997, in order to maximize the benefits to the parties of such coordination transactions. Wisconsin Electric is authorized to state that CPS joins in the requested effective date.

Copies of the filing have been served on CPS and the Public Service Commission of Wisconsin.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**44. Texas Utilities Electric Co.**

[Docket No. ER97–3885–000]

Take notice that on July 25, 1997, Texas Utilities Electric Company (TU Electric), tendered for filing three executed transmission service agreements (TSA's) with American Energy Solutions, Inc., Williams Energy Services Company and PECO Energy Company—Power Team for certain Economy Energy Transmission Service transactions under TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

TU Electric requests an effective date for the TSA's that will permit them to become effective on or before the service commencement date under each of the three TSA's. Accordingly, TU Electric seeks waiver of the Commission's notice requirements. Copies of the filing were served on American Energy Solutions, Inc., Williams Energy Services Company and PECO Energy Company—Power Team as well as the Public Utility Commission of Texas.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**45. PacifiCorp Power Marketing, Inc.**

[Docket No. ER97–3886–000]

Take notice that on July 25, 1997, PacifiCorp Power Marketing, Inc., on behalf of the PPM Sales Subsidiaries, tendered for filing initial FERC electric service tariffs, Rate Schedules No. 1, and a petition for blanket approvals and waivers of various Commission regulations under the Federal Power Act.

*Comment date:* August 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

**46. Vanpower, Inc.; QST Energy Trading Inc.; SuperSystems, Inc.; TECO EnergySource, Inc.; Preferred Energy Services, Inc.; Power Providers Inc.; CMS Marketing, Services and Trading, Company**

[Docket No. ER96–552–006; Docket No. ER96–553–007; Docket No. ER96–906–005; Docket No. ER96–1563–005; Docket No. ER96–2141–004; Docket No. ER96–2303–004; Docket No. ER96–2350–007 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On July 14, 1997, Vanpower, Inc., filed certain information as required by the Commission's January 19, 1996, order in Docket No. ER96–552–000.

On July 15, 1997, QST Energy Trading Inc., filed certain information as required by the Commission's March 14, 1996, order in Docket No. ER96–553–000.

On July 11, 1997, SuperSystems, Inc., filed certain information as required by the Commission's March 27, 1996, order in Docket No. ER96–906–000.

On July 14, 1997, TECO EnergySource, Inc., filed certain information as required by the Commission's June 11, 1996, order in Docket No. ER96–1563–000.

On July 15, 1997, Preferred Energy Services, Inc., filed certain information as required by the Commission's August 13, 1996, order in Docket No. ER96–2141–000.

On July 17, 1997, Power Providers, Inc., filed certain information as required by the Commission's September 3, 1996, order in Docket No. ER96–2303–000.

On July 22, 1997, CMS Marketing Services and Trading Company, filed certain information as required by the Commission's September 6, 1996, order in Docket No. ER96–2350-000.

**Standard Paragraph**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22294 Filed 8–21–97; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 5728–016]**

## Sandy Hollow Power Company; Notice of Availability of Environmental Assessment

August 18, 1997.

An environmentsal assessment (EA) is available for public review. The EA is for an application to amend the Sandy Hollow Hydroelectric Project. The licensee proposes to change its method of water delivery to its authorized 160–kW generating unit. The EA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Sandy Hollow Hydroelectric Project is located on the Indian River in Philadelphia Township, Jefferson County, New York.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed in the Public Reference Branch, Room 1C–1, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

For further information, please contact the project manager, Mr. John Novak, at (202) 219–2828.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22317 Filed 8–21–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Southwestern Power Administration

## Integrated System Power Rates

**AGENCY:** Southwestern Power Administration, DOE.

**ACTION:** Notice of public review and comment.

**SUMMARY:** The Administrator, Southwestern Power Administration (Southwestern), has prepared Current and Revised 1997 Power Repayment Studies which show the need for an increase in annual revenues to meet cost recovery criteria. Such increased revenues are needed primarily to cover increased investments and replacements in hydroelectric generating and high-voltage transmission facilities. The Administrator has developed proposed Integrated System Rate Schedules, which are supported by a rate design study, to recover the required revenues and to unbundle transmission rates for open access in accordance with the Federal Energy Regulatory Commission (FERC) Orders 888 and 889. Beginning January 1, 1998, the proposed rates would increase annual system revenues approximately 3.3 percent from $96,192,500 to $99,405,135.

**DATES:** The consultation and comment period will begin on August 22, 1997 and will end November 20, 1997.

1. Public Information Forum—September 4, 1997, 8:30 a.m.,Tulsa, OK.

2. Public Comment Forum—October 9, 1997, 8:30 a.m.,Tulsa, OK.

**ADDRESSES:** The forums will be held in Southwestern's offices, Room 1402, Williams Center Tower I, One West Third Street, Tulsa, Oklahoma 74103. Ten copies of the written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma, 74101.

**FOR FURTHER INFORMATION CONTACT:** Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 595–6696.

**SUPPLEMENTARY INFORMATION:** The U.S. Department of Energy was created by an Act of the U.S. Congress, Department of Energy Organization Act, Public Law 95–91, dated August 4, 1977, and Southwestern's power marketing activities were transferred from the Department of Interior to the Department of Energy, effective October 1, 1977. Guidelines for preparation of power repayment studies are included in DOE Order No. RA 6120.2, Power Marketing Administration Financial Reporting. Procedures for Public Participation in Power and Transmission Rate Adjustments of the Power Marketing Administrations are found at title 10, part 903, subpart A of the Code of Federal Regulations (10 CFR 903).

Southwestern markets power from 24 multi-purpose reservoir projects with hydroelectric power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the States of Arkansas, Missouri, Oklahoma, and Texas. Southwestern's marketing area includes these States plus Kansas and Louisiana. The costs associated with the hydropower facilities of 22 of the 24 projects are repaid via revenues received under the Integrated System rates, as are Southwestern's transmission facilities which consist of 2,220 kilometers (1,380 miles) of high-voltage transmission line, 24 substations, and 46 microwave and VHF radio sites. Costs associated with the Sam Rayburn and Robert D. Willis Dams, two projects that are isolated hydraulically, electrically, and financially from the Integrated System are repaid by separate rate schedules and are not addressed in this notice.

Following Department of Energy guidelines, the Administrator, Southwestern, prepared a Current Power Repayment study using existing system rates. The Study indicates that Southwestern's legal requirement to repay the investment in power generating and transmission facilities for power and energy marketed by Southwestern will not be met without an increase in revenues. The need for increased revenues is primarily due to the increased costs for project investments, together with increased costs for transmission and generation replacements. The Revised Power Repayment Study shows that additional annual revenues of $3,212,635, (a 3.3 percent increase), beginning January 1, 1998, are needed to satisfy repayment criteria.

A Rate Design Study has also been completed which allocates the revenue requirement to the various system rate schedules for recovery, and provides for transmission service rates in conformance with FERC Order No. 888 (Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities). The proposed new rates would increase estimated annual revenues from $96,192,500 to $99,405,195 and would satisfy the present financial criteria for repayment of the project and transmission system investments within the required number of years. As indicated in the Integrated System Rate Design Study, this revenue would be developed primarily through increases in the charges for transmission and ancillary services for deliveries of both Federal and non-Federal power and associated energy from the transmission system of Southwestern. There are also increased charges for transformation services for deliveries at voltages of 69 kV (kilovolt) or less. The generation component of the power rate has declined, as has the energy rate.

A second component of the Integrated System rates for power and energy, the purchased power adder, produces revenues which are segregated to cover the cost of power purchased to meet required contractual obligations. The purchased power adder is established to reflect what is expected to be needed by Southwestern to meet purchased power needs on an average annual basis. It has been increased slightly from the existing rate to reflect the projected power costs based on present market rates. The Administrator's authority to adjust the purchased power adder annually at his discretion, plus or minus $0.0005 per kilowatthour (kWh), is increased by six tenths of one mill per kWh to $0.0011 per kWh in the proposed rate schedules.

Below is a general comparison of the existing and proposed system rates:

| | Existing rates | Proposed rates |
|---|---|---|
| | Rate Schedule P–90A (System Peaking) | Rate Schedule P–98 (System Peaking) |
| Capacity: Grid or 138–161kV. | $2.52/kW/Mo | $1.87/kW/Mo + $0.66/kW/Mo (transmission) + $0.09 (ancillary services) + up to $0.06/kW/Mo (ancillary services) for delivery in control area: |
| | Transformation Service | Transformation Service |
| 69 kV | +$0.12/kW/mo | +$0.27/kW/mo. |
| Delivery below 69 kV | +$0.55/kW/mo<br>Note: transformation charge applied on capacity reservation. | No separate charge.<br>Note: transformation charge applied on usage, not reservation. |
| Energy | $0.0052/kWh of Peaking Energy and Supplemental Peaking Energy + a Purchased Power Adder of $0.0009/kWh of Peaking Energy, decreasing to $0.00/kWh after 9/30/93; (±0.0005 annually at Administrator's discretion) with a customer-specific purchase power credit through September 30, 1993. | $0.0048/kWh of Peaking Energy and Supplemental Peaking Energy + a Purchased Power Adder of $0.0011 of Peaking Energy (± 0.0011 annually at Administrator's discretion). |
| | Rate Schedules P–90B & F90B | No longer applicable. |
| | Rate Schedule TDC–90 (Transmission) | Rate Schedule TDC–98 (Transmission) |
| Capacity (Firm Reservation w/Energy) Grid or 138–161 kV. | $0.52/kW/mo<br>No firm service by week or day offered | $0.66/kW/Mo. $0.17/kW/week, $0.03/kW/day.<br>+Required Ancillary Services: $0.090/kW/mo, or $0.022/kW/week, or $0.004/kW/day.<br>+Non-Req Ancillary Service: up to :$0.059/kW/mo, or $0.015/kW/week, or $0.003/kW/day, or for delivery in control area. |

| | Existing rates | Proposed rates |
|---|---|---|
| | Transformation Service | Transformation Service |
| 69 kV | +$0.12/kW/Mo | +$0.27/kW/Mo |
| Delivery below 69 kV | +$0.55/kW/Mo | No separate charge. |
| | Note: transformation charge applied on capacity reservation. | Note: transformation charge applied on usage, not reservation. Weekly and daily rates not applied. |
| Energy (Firm w/o Capacity) | $0.0012/kWh | No longer offered. |
| Capacity (Non-firm with energy): Grid or 138–161 kV. | The lesser of: | No separate capacity charge. |
| | $0.0172/kW/day, or | $0.0015/kWh delivered. |
| | $0.0014/kWh | |
| | Transformation Service | Transformation Service |
| 69 kV | The lesser of:. | |
| | +$0.0040/kW/day | No separate capacity charge. |
| | +$0.0004/kWh | Note: transformation charge applied on usage, not reservation. Weekly, daily, and hourly rates not applied. |
| | Transformation Service | |
| Delivery below 69 kV | The lesser of:. | |
| | +$0.0183/kW/day | No separate capacity charge. |
| | +$0.0015/kWh | Note: transformation charge applied on usage, not reservation. Weekly, daily, and hourly rates not applied. |
| | Rate Schedule IC–90 | Service no longer offered. |
| | Rate Schedule EE–90 (Excess Energy) | |
| Energy | $0.0052/kWh | $0.0048/kWh + $0.0018/kWh (transmission) + $0.00025/kWh (ancillary service) + for delivery in control area: $0.00017/kWh (ancillary service). |

Opportunity is presented for Southwestern customers and other interested parties to receive copies of the Integrated System Studies and proposed rate schedules. If you desire a copy of the Integrated System Power Repayment Studies and Rate Design Study Data Package with proposed Rate Schedules, submit your request to Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, P.O. Box 1619, Tulsa, OK 74101–1619 (918) 595–6696.

A Public Information Forum is being held to explain to customers and the public the proposed rates and supporting studies. The Forum will be conducted by a chairman who will be responsible for orderly procedure. Questions concerning the rates, studies, and information presented at the Forum will be answered, to the extent possible, at the Forum. Questions not answered at the Forum will be answered in writing, except that questions involving voluminous data contained in Southwestern's records may best be answered by consultation and review of pertinent records at Southwestern's offices.

Persons interested in attending the Public Information Forum should indicate in writing by letter or facsimile transmission (918–595–6656) by August 31, 1997, their intent to appear at such Forum. If no one so indicates their intent to attend, no such Forum will be held.

A Public Comment Forum will be held at which interested persons may submit written comments or make oral presentations of their views and comments. The Forum will be conducted by a chairman who will be responsible for orderly procedure. Southwestern's representatives will be present, and they and the chairman may ask questions of the speakers. Persons interested in attending the Public Comment Forum should indicate in writing by letter or facsimile transmission (918–595–6656) by September 30, 1997, their intent to appear at such Forum. If no one so indicates their intent to attend, no such Forum will be held. Persons interested in speaking at the Forum should submit a request to the Administrator, Southwestern, at least three (3) days prior to the Forum so that a list of speakers can be developed. The chairman may allow others to speak if time permits.

A transcript of each Forum will be made. Copies of the transcripts may be obtained from the transcribing service. Copies of all documents introduced will be available from Southwestern upon request for a fee. Written comments on the proposed Integrated System Rates are due on or before November 20, 1997. Ten copies of the written comment should be submitted to the Administrator, Southwestern, at the above-mentioned address for Southwestern's offices.

Following review of the oral and written comments and the information gathered in the course of the proceedings, the Administrator will submit the amended Integrated System Rate Proposal, Power Repayment Studies, and Rate Design Study in support of the proposed rates to the Deputy Secretary of Energy for confirmation and approval on an interim basis, and to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis. The FERC will allow the public an opportunity to provide written comments on the proposed rate increase before making a final decision.

Issued in Tulsa, Oklahoma, this 8th day of August, 1997.

**Forrest E. Reeves,**

*Acting Administrator.*

[FR Doc. 97–22334 Filed 8–21–97; 8:45 am]

BILLING CODE 6450–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5878–9]**

## Consumer and Commercial Products: Wood Furniture, Aerospace, and Shipbuilding and Ship Repair Coatings: Control Techniques Guidelines in Lieu of Regulations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed determination.

**SUMMARY:** The EPA is proposing its determination that control techniques guidelines (CTG) are substantially as effective as national regulations under section 183(e) of the Clean Air Act (CAA), as amended in 1990, in reducing volatile organic compounds (VOC) emissions in ozone nonattainment areas from wood furniture manufacturing,

aerospace, and shipbuilding and ship repair coatings and that, therefore, the EPA may issue a CTG in lieu of a national regulation for each of these specific categories. The CAA requires the EPA to control VOC emissions from certain categories of consumer and commercial products through either issuance of national rules or CTG. The proposed action implements this requirement by determining that CTG are substantially as effective as regulations for wood furniture manufacturing, aerospace, and shipbuilding and ship repair coatings and, therefore, may be issued in lieu of regulations.

The EPA determined that VOC emissions from consumer and commercial products can contribute to the formation of ozone and ozone levels that violate the national ambient air quality standards (NAAQS) for ozone. Ozone, which is a major component of smog, causes negative health and environmental impacts when present in high concentrations at ground level. As of April 1996, there were 73 geographic areas which exceeded the NAAQS for ozone. These ozone nonattainment areas have a combined population of 114 million people.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the EPA's determination that CTG may be issued in lieu of national regulations for wood furniture, aerospace, and shipbuilding and ship repair coatings.

**DATES:**

*Comments.* Comments must be received on or before October 21, 1997.

*Public Hearing.* A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed determination that CTG are substantially as effective as national regulations for wood furniture, aerospace, and shipbuilding and ship repair coatings and, therefore, CTG may be issued in lieu of regulations. If anyone contacts the EPA requesting to speak at a public hearing by September 8, 1997, a public hearing will be held on September 25, 1997, beginning at 9:30 a.m. Persons interested in attending the hearing should contact Ms. Kim Teal at (919) 541–5580 to verify whether a hearing will occur and the location of the hearing.

*Request to Speak at Hearing.* Persons wishing to present oral testimony must contact the EPA by September 17, 1997, by contacting Ms. Kim Teal, Coatings and Consumer Products Group (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5580.

**ADDRESSES:**

*Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–96–23, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

*Docket.* Docket No. A–96–23, containing supporting information for the proposed determination of the effectiveness of a CTG for the wood furniture, aerospace, and shipbuilding and ship repair coatings under section 183(e), is available for public inspection and copying between 8:30 a.m. and 5:00 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, 1st Floor, 401 M Street, SW, Washington, DC 20460. Telephone (202) 260–7548, FAX (202) 260–4400. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel Brown, (919) 541–5305, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

**SUPPLEMENTARY INFORMATION:**

## Electronic Access and Filing Addresses

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disk in WordPerfect 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–96–23. No Confidential Business Information should be submitted through e-mail. Electronic comments on this proposed determination may be filed online at many Federal Depository Libraries.

An electronic version of this proposed determination is available for download from the EPA's Technology Transfer Network (TTN), a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for data transfer of up to 14,400 bits per second. If more information on TTN is needed, contact the systems operator at (919) 541–5384.

## Potentially Affected Entities

Entities potentially affected by this action are those wood furniture manufacturing operations, aerospace manufacturing and rework operations, or shipbuilding and ship repair (surface coating) operations which are (or have the potential to become) ''major'' sources of VOC emissions and are located in nonattainment areas of ozone. Potentially affected entities are included in the following table:

| Category | Examples of potentially affected entities |
|---|---|
| Industry | Wood furniture or wood furniture component(s) manufacturing. |
| | Any manufacturing, reworking, or repairing of aircraft such as airplanes, helicopters, missiles, rockets, and space vehicles. |
| | Any building or repairing, repainting, converting, or alteration of ships. The term ship means any marine or freshwater vessel, including self-propelled by other craft (barges), and navigational aids (buoys). Note: Offshore oil and gas drilling platforms and vessels used by individuals for noncommercial, nonmilitary, and recreational purposes that are less than 20 meters in length are not considered ships. |
| Federal Government | Federal agencies which undertake aerospace manufacturing or rework operations (see above) such as the Air Force, Navy, Army, and Coast Guard. |
| | Federal agencies which undertake shipbuilding or ship repair operations (see above) such as the Navy and Coast Guard. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities which are the focus of this action. This table lists the types of entities that the EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. If you have questions regarding the focus or applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this notice.

The information presented in this notice is organized as follows:

I. Background
II. Wood Furniture Manufacturing Coatings
A. Factors to Consider Regarding the Effectiveness of CTG Compared to a National Regulation
B. Overview of Existing Wood Furniture CTG and Expected Emissions Reductions
C. Estimate of BAC for Wood Furniture Coatings
D. Comparison of Effectiveness of Wood Furniture CTG with National Regulation Based on BAC in Reducing VOC Emissions
III. Aerospace Coatings
A. Factors to Consider Regarding the Effectiveness of CTG Compared to a National Regulation
B. Overview of Recently Proposed Aerospace CTG and Expected Emissions Reductions
C. Estimate of BAC for Aerospace Coatings
D. Comparison of Effectiveness of Aerospace CTG with National Regulation Based on BAC in Reducing VOC Emissions
IV. Shipbuilding and Ship Repair Coatings
A. Factors to Consider Regarding the Effectiveness of CTG Compared to a National Regulation
B. Overview of Shipbuilding and Ship Repair CTG and Expected Emissions Reductions
C. Estimate of BAC for Shipbuilding and Ship Repair Coatings
D. Comparison of Effectiveness of Shipbuilding and Ship Repair CTG with National Regulation Based on BAC in Reducing VOC Emissions
V. Proposed Determination
VI. Cost-Effectiveness
VII. Solicitation of Comments
VIII. Administrative Requirements
A. Public Hearing
B. Docket
C. Paperwork Reduction Act
D. Administrative Designation and Regulatory Analysis
E. Regulatory Flexibility
F. Unfunded Mandates Act

## I. Background

Exposure to ground-level ozone is associated with a wide variety of human health effects, agricultural crop loss, and damage to forests and ecosystems. The most thoroughly studied health effects of exposure to ozone at elevated levels during periods of moderate to strenuous exercise are the impairment of normal functioning of the lungs, symptomatic effects, and reduction in the ability to engage in activities that require various levels of physical exertion. Typical symptoms associated with acute (one to three hour) exposure to ozone at levels of 0.12 parts per million (ppm) or higher under heavy exercise or 0.16 ppm or higher under moderate exercise include cough, chest pain, nausea, shortness of breath, and throat irritation.

Ground-level ozone, which is a major component of ''smog,'' is formed in the atmosphere by reactions of VOC and oxides of nitrogen (NOx) in the presence of sunlight. In order to reduce ground-level ozone concentrations, emissions of VOC and NOx must be reduced.

Section 183(e) of the CAA addresses the reduction of VOC emissions from consumer and commercial products. It requires the EPA to study VOC emissions from consumer and commercial products, to report to Congress the results of the study, and to list for regulation products accounting for at least 80 percent of VOC emissions resulting from use of such products in ozone nonattainment areas. Accordingly, on March 23, 1995 (60 FR 15264), the EPA announced the availability of the ''Consumer and Commercial Products Report to Congress'' (EPA–453/R–94–066-A), and published the consumer and commercial products category list and schedule for regulation. As stated in that notice, the list and schedule could be amended as further information becomes available. Group I, which identifies product categories scheduled for regulation by 1997, includes wood furniture, aerospace, and shipbuilding and ship repair coatings. Therefore, the EPA is required to regulate these three categories by 1997. In this action, the EPA seeks comment on the listing and the schedule for regulation with respect to these three categories.

Regulations developed under section 183(e) must be based on best available controls (BAC). Section 183(e)(1)(A) defines BAC as follows:

> The degree of emission reduction that the Administrator determines, on the basis of technological and economic feasibility, health, environmental, and energy impacts, is achievable through the application of the most effective equipment, measures, processes, methods, systems, or techniques, including chemical reformulation, product or feedstock substitution, repackaging, and directions for use, consumption, storage, or disposal.

Although section 183(e) requires the EPA to issue regulations, section 183(e)(3)(C) provides that the EPA may issue CTG in lieu of a national regulation where the EPA determines that the CTG will be ''substantially as effective as regulations'' in reducing emissions of VOC in ozone nonattainment areas.

Although not specifically defined in the CAA, a CTG is a guidance document issued by the EPA which, under section 182(b)(2), triggers a responsibility for States to submit reasonably available control technology (RACT) rules for stationary sources of VOC that are covered by the CTG as part of their State implementation plans. The EPA defines RACT as ''the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility'' (44 FR 53761, September 17, 1979). Each CTG includes a ''presumptive norm'' or ''presumptive RACT'' that the EPA believes satisfies the definition of RACT. If a State submits a RACT rule that is consistent with the presumptive RACT, the State does not need to submit additional support to demonstrate that the rule meets the CAA's RACT requirement. However, if the State determines to submit an alternative emission limit or level of control for a source or source category for which there is a presumptive RACT, the State must submit independent documentation as to why the rule meets the statutory RACT requirement.

Although section 183(e) authorizes issuance of a CTG in lieu of a regulation for categories of consumer and commercial products for which a CTG would be substantially as effective in ozone nonattainment areas as a regulation would be, the statute does not explicitly identify the appropriate standard, or level of control, for the CTG. As discussed above, a CTG generally triggers the responsibility of a State to develop regulations based on RACT. Congress did not provide a distinct standard to be considered when determining whether a CTG would be substantially as effective as a regulation pursuant to section 183(e), and legislative history does not address this issue. Because the only statutory requirement triggered by a CTG is establishment of RACT, the EPA believes that Congress intended the more generally applied RACT standard to be the basis for determining whether a CTG could be issued in lieu of regulation for consumer and commercial products.

In some situations, the EPA may examine an existing CTG, or one that is under development pursuant to other requirements of the CAA, to determine

if such CTG is substantially as effective as a regulation under section 183(e). The EPA believes that such comparisons would fulfill the requirements of section 183(e) when such CTG are based on RACT or standards determined to be equivalent to RACT.

Sections 183(b)(3) and (4) require the EPA to establish CTG based on ''best available control measures'' (BACM) to reduce emissions from aerospace coatings and solvents and shipbuilding and ship repair coating operations. As discussed later in this notice, the EPA determined that for the CTG based on BACM required under sections 183(b)(3) and (4) for aerospace coatings and shipbuilding and ship repair coating operations, RACT would in fact be equivalent to BACM. Therefore, it is appropriate for the EPA to consider whether these CTG, which would meet both BACM and RACT, would be substantially as effective as a BAC-based regulation issued under section 183(e).

In exercising its discretion to consider a CTG as a regulatory alternative under section 183(e) of the CAA, the EPA recognizes that because its specific purpose is to reduce emissions of VOC in ozone nonattainment areas, in some cases a CTG can be substantially as effective as a national regulation, particularly for some of the commercial products scheduled for regulation under section 183(e). In fact, in some instances, a CTG may be more effective because it can be directed at a broader scope of regulated entities. Section 183(e) defines regulated entities as follows:

(i) * * * manufacturers, processors, wholesale distributors, or importers of consumer or commercial products for sale or distribution in interstate commerce in the United States; or (ii) manufacturers, processors, wholesale distributors, or importers that supply the entities listed under clause (i) with such products for sale or distribution in interstate commerce in the United States.

Based on this definition, a regulation issued under section 183(e) for consumer or commercial products would focus only on the manufacturers or importers of the solvents and products supplied to the consumer or industry, rather than on the consumer or end-users of the products within an industry. Focusing on manufacturers and importers is an effective approach for reducing emissions from consumer and commercial products, especially those which are easily transportable and widely distributed to consumers and contractors for use in unlimited locations. For these types of products, a CTG may not be as effective as a national regulation. The transportability of the products tend to decrease rule effectiveness due to the likelihood of unregulated or ''higher VOC'' products being bought in attainment areas and used in nonattainment areas. In addition, since the end-users include homeowners and other widely varied consumers, effective enforcement on these types of users would be limited. Therefore, for these types of products, the main benefit of a CTG may not be achieved; namely, the ability to ensure that the product used meets the requirements after any thinner or other VOC components are added. In such instances where the end user is at a specified manufacturing setting, a CTG may be as, or more, effective than a regulation because a CTG can be reasonably focused on the end-user, and thus, directly target the coating as-applied, rather than as-supplied, at the facilities. The ''as-applied'' coating would include the VOC in the manufactured commercial coating itself plus any VOC solvent added to the product by the end-user. The application of a CTG to these industries may be particularly effective because, in contrast to consumer products, these industries have well-defined end-users which consistently apply large volumes of coatings at specific and easily identifiable locations. At the point of application, a CTG can prohibit an end-user from thinning products beyond VOC requirements. In addition, a CTG could achieve added VOC reductions in industrial settings where these coatings are applied by requiring particular application equipment or work practices. These types of requirements would not be practical for widely distributed consumer products since enforcement personnel would not be aware of locations where the products may be used on any given day.

In the case of wood furniture manufacturing, aerospace, and shipbuilding and ship repair facilities, large volumes of coatings may be applied in a manner where the specific application process requires the addition of VOC solvent and other adjuncts to achieve and maintain ideal coating properties; these additions by the end-user may increase emissions of VOC which may not be adequately addressed by a regulation aimed at regulated entities (i.e., the coating manufacturers). Because a CTG is directed toward the end-user, requirements could directly target the coating as applied at the facility. The ''as-applied'' coating would include any VOC solvent added to the commercial products (i.e., the coatings as supplied by the coating manufacturers) by the end-user. In addition, a CTG could target application equipment and work practice standards to achieve further VOC reductions. In these cases, a CTG may be a more effective means to reduce VOC emissions than a national regulation.

Considering these factors, the EPA estimated and compared the likely VOC reductions in ozone nonattainment areas to be achieved by a CTG versus a national regulation based on BAC for each of these categories. In conducting the comparison of whether a CTG based on RACT would be substantially as effective as a national regulation based on BAC, the EPA estimated what RACT and BAC would be in order to estimate emission reductions. Although the EPA considered likely estimates of RACT and BAC for this comparative purpose, at this time, specific RACT and BAC limits are not being proposed and the EPA only seeks comments on the proposed case-by-case determination that a CTG would be as effective as a national regulation for these three industries. If the EPA determines, based on comments received, that a CTG would not be substantially as effective as a national regulation, the EPA will proceed with development of a BAC-based national regulation. As today's proposal relies only on estimates of BAC, it is possible that a BAC-based regulation may differ from the estimates relied on today.

Based on the comparisons discussed below, the EPA is proposing that a CTG for wood furniture, aerospace, and shipbuilding and ship repair industries would be substantially as effective as a national regulation developed under section 183(e) in reducing VOC emissions from facilities located in ozone nonattainment areas. In determining whether to develop a CTG or a regulation, the EPA may take into account a variety of different factors related to implementation and enforcement, such as the most effective entity to target for regulation, the need for flexibility, the distribution and site of use for the products, consistency with other control strategies, and cost-effectiveness. As described below on a case-by-case basis, some of these factors can affect the effectiveness of a CTG in controlling VOC emissions from commercial products. The EPA requests comment on these determinations.

## II. Wood Furniture Manufacturing Coatings

### *A. Factors To Consider Regarding the Effectiveness of CTG Compared to a National Regulation*

In evaluating control strategies for VOC emissions from wood furniture manufacturing coatings, it is necessary to know how those coatings are used by the wood furniture industry. The wood furniture industry is commonly grouped into household/residential furniture, office/business furniture, and kitchen cabinet furniture. Each group consists of different grades and styles of wood furniture products and uses a variety of raw materials and manufacturing methods. Differences in the products would be apparent in finish application methods, finishing sequences, types of wood or wood product used, and types of finish coatings used.

The coatings used in the wood furniture industry penetrate the wood and become an integral part of the final product. The coatings are very complex in that they react differently with the various types of wood, fiberboard, and particleboard used by the industry, as well as each subsequent coating applied in the finishing process. Therefore, each type of coating used for a particular step in a finishing sequence is unique and must be formulated as part of a complimentary finishing system to ensure compatibility. In addition, the VOC content and composition of a coating is sometimes adjusted to account for changes in the drying time and the overall ease of application in relation to ambient temperature and the humidity. Solvents used to adjust the coatings are also used for cleaning application equipment and work spaces and to strip finished pieces (referred to as washoff) that do not meet specifications.

The related VOC emissions from the wood furniture industry, therefore, are from the use of the coatings and the use of solvent in cleaning and washoff operations. Because VOC emissions in this industry are due to a variety of different sources in the manufacturing process, including the coatings as applied, a national regulation under section 183(e) of the CAA may be of limited effectiveness in reducing VOC emissions from wood furniture coatings. This is primarily due to the fact that the EPA's authority under section 183(e), as previously discussed, does not authorize the regulation of end-users. Thus, regulations could apply only to the wood furniture coatings as ''supplied'' to the wood furniture industry, not to the users who apply the coatings. Since the wood furniture manufacturers often alter a supplied coating prior to its application by adding VOC solvents, the ''as-applied'' VOC content of the coating ends up being greater than the ''as-supplied'' VOC content. For this reason, a CTG could be as effective, if not more effective, than a national regulation. For the wood furniture industry, consisting of facilities which could be inspected for compliance with State RACT rules, a CTG could provide limits for the coatings as applied and also achieve VOC emission reductions from the implementation of work practice standards for the associated cleaning and washoff operations.

### *B. Overview of Existing Wood Furniture CTG and Expected Emissions Reductions*

Under a separate **Federal Register** notice, the EPA recently released a final CTG for the wood furniture manufacturing industry (61 FR 25223, May 20, 1996) pursuant to section 183(a) of the CAA. The EPA is not seeking comment on the content, or issuance, of that wood furniture CTG as it was issued independently of any requirements of section 183(e). However, for the purpose of determining whether a CTG would be substantially as effective as a regulation as required under section 183(e), the following discussion refers to that CTG as an estimate of the potential emission reductions obtainable with a CTG for the wood furniture industry. As the CTG issued pursuant to section 183(a) was based on RACT, and a CTG to be issued pursuant to section 183(e) would also be based on RACT, the already existing CTG provides an appropriate estimate for these purposes.

The wood furniture CTG applies to wood furniture manufacturing facilities located in ozone nonattainment areas that emit more than 25 tons per year (tpy) of VOC (10 tpy for sources located in extreme ozone nonattainment areas). The CTG includes emission limits for the finish coatings used by the wood furniture industry and work practice standards that will reduce emissions from finishing, cleaning, and washoff operations by reducing finish coating and solvent usage.

The CTG emission limits were established through a regulatory negotiation process consisting of stakeholders from industry, environmental and public health groups, States, and the EPA. For over two years the stakeholders evaluated several control technique options in consideration of advancing technology, compatibility, and feasibility. At the conclusion of the evaluation, it was determined that of the various coatings used in the finishing process, conventional topcoats and sealers could technically and feasibly be replaced with waterborne and/or high solids coatings. The waterborne technology, however, is limited to topcoats since waterborne sealer technology has been slower to advance and is limited in availability to a few segments of the industry where both waterborne sealers and topcoats can be used to meet product quality requirements. The high solids technology is further advanced and both high-solids topcoats and sealers are, or will be, available to the industry.

The emission limits corresponding to these two reference control technologies are presented in table 1. A wood furniture manufacturing facility may reformulate all of its topcoats so that it meets the waterborne reference technology limit of 0.8 kilogram (kg) VOC/kg solids, in which case it could use any sealer with no restriction on its VOC content; or it may reformulate both the sealers and topcoats to meet the high solids reference technology limits of 1.9 and 1.8 kg VOC/kg solids, respectively (2.3 and 2.0 for vinyl sealers and conversion varnish topcoats). The 0.8 kg VOC/kg solids limit for the waterborne topcoats may also be achieved with other types of topcoats such as ultraviolet-cured topcoats which also meet this limit.

Facilities must also comply with the work practice standards. These include a limit on the types of application equipment that may be used to apply finishing materials and a requirement that facilities develop and implement an operator training program, a cleaning and washoff solvent accounting system, and a leak detection and repair program. Facilities must also keep all containers used to store finishing materials and solvents closed when not in use. Table 2 summarizes the work practice standards included in the CTG.

In the previously issued CTG, the EPA estimated that more than 950 wood furniture manufacturing facilities will be subject to State regulations based on the CTG. The emission limits and work practice standards are expected to reduce VOC emissions from these facilities by 18,500 megagrams per year (Mg/yr) (20,400 tpy) in ozone nonattainment areas.

### *C. Estimate of BAC for Wood Furniture Coatings*

As discussed in the background section of this notice, the EPA may determine that a CTG would be substantially as effective as a regulation issued under section 183(e). To make

such a determination, the EPA estimated and compared the likely VOC reductions in nonattainment areas to be achieved by a CTG versus a regulation. Regulations issued pursuant to section 183(e) must be based on BAC. Thus, for comparative purposes, the EPA identified potential limits which would be likely to represent BAC. Although the EPA conducted such an analysis, the EPA is not proposing this estimate as a BAC limit at this time. The BAC estimate discussed in this proposal represents a likely limit that could represent BAC in a national regulation. However, if the EPA were to proceed with the development of a national BAC regulation, it is possible that the BAC-based regulation may differ from the estimates relied on today for comparison purposes.

In estimating BAC for wood furniture coatings, the EPA evaluated the information and data used to establish the VOC emission controls in the wood furniture CTG. As previously discussed, the limits recommended in the CTG resulted from over two years of evaluating control options in consideration of advancing technology and feasibility. Although that CTG was based on RACT, as discussed below, the EPA believes that the standard in the CTG reflects the most advanced control technologies available for use by the industry and is, thus, representative of BAC.

In evaluating the topcoat and sealer coatings used by the wood furniture manufacturing industry, the EPA considered conventional coatings with lower VOC content as well as the more advanced waterborne coatings and high solids coatings during the CTG development process. For the purpose of the following discussion, it is helpful to think of the different coating types (e.g., conventional, waterborne, high solids) as distinct technologies comprising separate coating systems. To maintain the diversity of wood furniture products and the various levels of product quality that customers demand, the EPA believes a variety of coating systems should remain available. Therefore, in establishing the RACT limits in the CTG, the EPA included separate limits for waterborne and high solids coating technologies. However, rather than estimating limits for each coating technology in establishing BAC, the EPA estimated a single set of coating limits representing the lowest achievable VOC content which would not preclude the manufacture of the required coatings for each technology. Again, this is because a regulation under section 183(e) would not apply to the end-user of the product (e.g., the wood furniture manufacturing industry), but rather the manufacturer or importer of the product (e.g., the manufacturer of the wood furniture coating).

In evaluating BAC, waterborne technology and UV-curable coatings offered topcoats and sealers with the lowest VOC contents among all of the coating technologies considered. However, as described previously, only waterborne topcoats were determined to be RACT with the limit in the CTG set at 0.8 kg VOC/kg solid. In estimating BAC, the EPA considered strengthening the RACT limit for waterborne technology by establishing a VOC limit for waterborne sealers (which the CTG did not include) and lowering the RACT VOC limit for topcoats. However, if the EPA established BAC limits for topcoats and sealers based on waterborne technology with the lowest VOC content, it would effectively eliminate the availability of other coating technologies (e.g., high solids coatings). Although a limit representing BAC would not necessarily need to allow the manufacture and availability of other coating technologies, some segments of the industry maintain that without these coating technologies they cannot provide the product quality in demand. For purposes of this analysis, the EPA believes that establishing a BAC limit based on waterborne technology may have adverse economic impacts on these industry segments, particularly those which have already invested time and resources in converting their facilities to use the high solids coating technology. Since this option may present technological limits and potentially significant economic impacts, for the purpose of this analysis, the EPA believes that BAC would not be based on the use of waterborne coatings.

The EPA further evaluated potential BAC limits in consideration of high solids coating technology. High solids coating technology is widely available throughout most segments of the wood furniture industry and both high solids topcoats and sealers were determined to be RACT with a VOC limit of 1.8 kg VOC/kg solids and 1.9 kg VOC/kg solids respectively. For high solids conversion varnish topcoats and vinyl sealers, the RACT limits are 2.0 and 2.3 kg VOC/kg solids respectively. In estimating BAC, the EPA considered lowering the CTG RACT limits for high solids technology coatings by adopting lower VOC limits adopted in a similar State/local agency rule. However, in evaluating these local VOC limits, it was discovered that the sources being regulated typically did not include the diversity of facilities and operating conditions that must be considered in establishing national limits. Furthermore, since the adopted limits in the local rule have not gone into effect, compliance with the limits has not been demonstrated.

The EPA, therefore, believes that the limits established as RACT are representative of BAC with the possible exception of conversion varnish topcoats. For high solids conversion varnish topcoats, the EPA believes the BAC limit could be 1.8 kg VOC/kg solids as compared to the RACT limit of 2.0 kg VOC/kg solids.

The EPA believes that setting a BAC limit for topcoats equal to 1.8 kg VOC/kg solids is technically feasible. Although this limit would effectively eliminate conventional topcoats, both the waterborne and high solids coatings could be manufactured to meet this limit and would allow the wood furniture manufacturing industry to produce the diversity and quality of products demanded. In establishing a BAC limit for sealers, the EPA believes that the high solids technology would not be used as a basis. Setting the BAC limit for sealers at 1.9 kg VOC/kg solids would effectively require facilities which converted to waterborne topcoats to use high solid sealers since waterborne sealers are not available for all applications. This may pose a problem for the industry because the waterborne and high solids technologies are not necessarily compatible and many segments of the industry may not be able to meet their product quality requirements with a combination of waterborne topcoats and high solids sealers. The industry maintains that when using waterborne topcoats, it is necessary in some applications to use conventional sealers to maintain product quality. Therefore, to estimate a BAC limit for sealers, the EPA relied upon an analysis of conventional sealers. Based on this analysis, the EPA determined that a reasonable estimate of BAC for sealers is 3.9 kg VOC/kg solids.

In summary, for purposes of this analysis, the EPA believes that the following limits would be likely to represent BAC for wood furniture coatings:

Sealers—3.9 kg VOC/kg solids; and

Topcoats—1.8 kg VOC/kg solids.

The EPA requests comments on the determination that these limits are representative of BAC. At this point, the EPA is not proposing these limits as BAC for a national regulation; rather, the EPA is using these estimated limits to compare the effectiveness of a wood furniture CTG to a national regulation aimed at reducing VOC emissions in nonattainment areas for the purpose of determining whether a CTG for this

category is substantially as effective as a national regulation.

*D. Comparison of Effectiveness of Wood Furniture CTG With National Regulation Based on BAC in Reducing VOC Emissions*

Based on EPA estimates of likely BAC limits incorporated into a national regulation compared to the CTG, the EPA believes that a CTG for wood furniture manufacturing coatings would achieve greater VOC emission reductions in ozone nonattainment areas than a regulation under section 183(e) of the CAA. As previously discussed, the EPA estimates that the wood furniture CTG will reduce VOC emissions from wood furniture manufacturing facilities located in ozone nonattainment areas by 18,500 Mg/yr (20,400 tpy). Of all the wood furniture facilities located in nonattainment areas, there are approximately 950 facilities, emitting on average 25 or more tons of VOC per year, which would be affected by the CTG. Alternatively, a national regulation would limit the VOC content of coatings available to all wood furniture manufacturing facilities, including those emitting less than 25 tpy VOC. Although a national regulation would affect the coatings supplied to approximately 4,500 facilities located in ozone nonattainment areas, most of these facilities are very small and do not use significant quantities of finishing coatings materials. Based on the estimated BAC limits and number of affected facilities, the EPA estimates that the implementation of a national regulation would reduce VOC emissions from wood furniture manufacturing facilities located in ozone nonattainment areas by 14,234 Mg/yr (15,689 tpy).

Although fewer facilities will be impacted by the CTG than by a national regulation, the EPA estimates that the reductions per facility, and, therefore, overall emission reductions, are greater with the CTG than they are with a national regulation due to a variety of factors. One factor, as discussed previously, is that the CTG includes work practice standards which result in emission reductions that are not obtainable with a national regulation. Another factor is that in estimating the emission reductions from a national regulation, the EPA assumed that all facilities would use topcoats and sealers with the estimated BAC limits of 1.8 kg VOC/kg solids and 3.9 kg VOC/kg solids, respectively. As discussed previously, the BAC limits represent the lowest VOC limits that would be enforceable in a national regulation for all of the coating technologies used in wood furniture manufacturing. Arguably, the estimated BAC limits could be subcategorized, as in the CTG, to specify particular coating limits for the coatings supplied within the distinct coating technologies. However, the EPA believes that this approach would not lead to further VOC reductions from wood furniture coatings since, as previously discussed, the supplied coatings are often altered prior to use. However, individual facilities that can use waterborne technology will, in practice, use waterborne topcoats below the BAC limits for all coating technology topcoats. Likewise, facilities that can use high solids technology will use high solid sealers below the BAC limit for all coating technology sealers. Since the CTG RACT limits can be enforced at individual facilities, emission reductions from the CTG could account for the lowest limits in each distinct coating technology used by specific sectors of the industry.

This demonstrates the advantage of controlling emissions from the coatings as applied with a CTG, versus the coating as supplied by the manufacturer with a national BAC regulation. As discussed previously, the estimated BAC limits are applicable to all the various topcoat and sealer coating technologies supplied to the industry and, therefore, reflect the lowest VOC limits achievable by all the coating technologies. The CTG, however, can establish coating limits for particular application processes that can use a single coating technology and still produce quality products. Since the limits in a CTG are applicable to the coatings as applied, and regulators can inspect wood furniture manufacturing facilities for compliance, the EPA believes that a CTG is the most effective way to control emissions from the wood furniture coatings. Therefore, based on the emission reduction estimates, and the limited applicability of a national BAC regulation versus a CTG, the EPA believes that a CTG will be more effective in reducing VOC emissions from wood furniture manufacturing coatings in ozone nonattainment areas, and that a CTG may be issued in lieu of a national regulation under section 183(e)(3)(C).

## III. Aerospace Coatings

*A. Factors to Consider Regarding the Effectiveness of CTG Compared to National Regulation*

In evaluating control strategies for VOC emissions from aerospace coatings, the EPA identified how these coatings are used by the aerospace industry and sources of significant VOC emissions. The aerospace industry includes all manufacturing facilities that produce aerospace vehicles and/or components thereof and all facilities that rework or repair aerospace vehicles. Aerospace facilities can be divided into four market segments: Commercial original equipment manufacturers (OEM), commercial rework facilities, military OEM, and military rework facilities. The commercial OEM segment of the market includes the manufacture of commercial aircraft as well as the production of business and private aircraft. The military OEM segment of the market includes military installations and defense contractors that manufacture aircraft, missiles, rockets, satellites, and spacecraft. Rework facilities, both commercial and military, may rework many of the above end-products. The most significant VOC emissions from the aerospace manufacturing and rework operations are the coatings themselves as well as cleaning operations.

Most aerospace coatings are solvent-borne; the most common VOC solvents are toluene, xylene, methyl ethyl ketone, and methyl isobutyl ketone. The VOC content varies for the various coating categories and specific coating requirements. Coatings are applied to the surface of a part to form a decorative or functional solid film. The most widely used coatings fit into the broad categories of nonspecialized primers and topcoats. However, in addition to these two general categories, there are numerous specialty coatings that provide additional performance characteristics such as temperature, fluid, or fire resistance; flexibility; substrate compatibility; antireflection; temporary protection or marking; sealing; adhesively joining substrates; enhanced corrosion protection; or compatibility with a space environment. Each coating is unique due to individual performance standards particular to a specific design. The quality of the coatings is critical to the airworthiness and safety of the final product. Therefore, aerospace coating specifications are dictated by the Federal Aviation Administration, the Department of Defense, and specific customer requirements.

A wide variety of solvents, including some of those listed above, are also used for cleaning operations in the aerospace industry. Aerospace components are cleaned frequently during manufacturing to remove contaminants such as dirt, grease, and oil, and to prepare the components for the next operation. Application equipment and work spaces are also cleaned with

solvents resulting in potentially significant emissions.

The related VOC emissions from the aerospace industry are, therefore, from the use of the coatings and from the use of solvent in cleaning operations. Because VOC emissions in this industry are due to a variety of different sources in the manufacturing process, including the coatings as applied, a national regulation may be of limited effectiveness in reducing VOC emissions from aerospace coatings. This is primarily due to the limit of the EPA's authority under section 183(e), as previously discussed, to regulate only the aerospace coatings as supplied to the industry. Since, in practice, the supplied aerospace coatings are often altered prior to application by adding VOC solvents, the ''as-applied'' VOC content of the coating ends up being greater than the ''as-supplied'' VOC content. For this reason, a CTG could be as effective, if not more effective, than a national regulation. For the aerospace industry, consisting of facilities which could be inspected for compliance with State RACT rules, a CTG could provide limits for the coatings as applied and also achieve VOC emission reductions from the implementation of work practice standards for the associated cleaning operations.

*B. Overview of Recently Proposed Aerospace CTG and Expected Emissions Reductions*

On October 29, 1996 (61 FR 55842), a draft CTG for aerospace manufacturing and rework facilities was issued pursuant to section 183(b)(3) for public review along with a supplemental notice to the national emission standard for hazardous air pollutants (NESHAP). The EPA is not seeking comment on the content or issuance of that draft aerospace CTG with this notice. However, the following discussion refers to that CTG as an estimate of the potential emission reductions obtainable with a CTG for the aerospace industry. This discussion serves as the basis for the determination required under section 183(e) as to whether a CTG would be substantially as effective as a regulation.

The draft aerospace CTG applies to aerospace manufacturing and rework facilities which are considered major VOC sources located in ozone nonattainment areas that emit more than 25 tpy of VOC (10 tpy for sources located in extreme ozone nonattainment areas). The type and level of VOC control identified in the draft CTG is based on BACM. The draft CTG emission limits were established in conjunction with the development of maximum achievable control technology for the NESHAP. This involved extensive data gathering and evaluation to identify the best controls for the industry in consideration of advanced technology and feasibility. The VOC content limits of 350 grams per liter (g/l) (2.9 pounds per gallon (lb/gal)) (less water and exempt solvents) and 420 g/l (3.5 lb/gal) (less water and exempt solvents) were established for primers and topcoats respectively. The VOC content limits of 622 g/l (5.2 lb/gal) (less water and exempt solvents) and 160 g/l (1.3 lb/gal) (less water and exempt solvents) were established for Type I and Type II chemical milling maskants respectively. Additional VOC limits, as presented in table 3, were established for various specialty coating categories. The draft CTG also includes a requirement that facilities use specific types of application equipment (or techniques) for applying primers and topcoats and follow work practice guidelines for solvent cleaning operations, housekeeping measures, hand-wipe cleaning, flush cleaning, and spray gun cleaning.

The EPA estimates that approximately 64 percent of aerospace facilities, or 1,836 facilities, are located in ozone nonattainment areas and are expected to be subject to the aerospace CTG resulting in VOC emission reductions of 3,889 Mg/yr (4,288 tpy). Of the 3,889 Mg/yr (4,288 tpy), 2,721 Mg/yr (3,000 tpy) are expected to result from the VOC content limits of the applied coatings with the remaining reductions from the equipment and work practice standards.

As mentioned earlier, a CTG issued pursuant to section 183(e) would be based on RACT. The EPA believes that for aerospace coatings, RACT and BACM are identical. While typically BACM (''best'') implies more stringent control than RACT (''reasonable''), the EPA recognizes that there may be instances when there is such a limited range of controls for a specified industry or industry process that these two levels of control may be identical. The aerospace coating industry is such an instance. Thus, the EPA believes that it is appropriate to rely on these estimated emission reductions, which reflect both BACM and RACT, for the purpose of comparing the effectiveness of a CTG to a regulation under section 183(e).

*C. Estimate of BAC for Aerospace Coatings*

As discussed previously, the EPA must determine whether a CTG would be substantially as effective as a regulation based on BAC. In making this determination, the EPA has prepared a likely estimate of the emission reductions that could be achieved with a BAC-based regulation. Although the EPA prepared such an estimate, it is important to note that this is only an estimate of what emission reductions might be achieved with a BAC-based regulation. If the EPA were to proceed with the development of a national BAC regulation, it is possible that the level of VOC reductions resulting from a BAC-based regulation may differ from the estimates calculated today.

In estimating BAC for aerospace coatings, the EPA evaluated the data and information used to establish the VOC emission controls in the aerospace CTG issued pursuant to section 183(b) which is based on BACM. Although section 183(b) does not specifically define BACM, the VOC limits established under this section for primers and topcoats represent the best performing sources in the industry. Because there is no distinct definition of BACM, the EPA believes that limits based on BACM are similar, if not equivalent, to limits that would be established under BAC as required in section 183(e). Thus, the EPA believes it is reasonable to rely on the limits established under BACM as representative of BAC limits for the purpose of comparing the effectiveness of an aerospace CTG to a national regulation in reducing VOC emissions in ozone nonattainment areas. In this notice, the EPA is not proposing these limits as BAC for the purpose of issuing a national regulation. Rather, the EPA is using these estimated limits to compare the effectiveness of an aerospace CTG to a national regulation aimed at reducing VOC emissions in nonattainment areas for the purpose of determining whether a CTG for this category is substantially as effective as a regulation.

*D. Comparison of Effectiveness of Aerospace CTG With National Regulation Based on BAC in Reducing VOC Emissions*

As discussed previously, the EPA estimated that the aerospace CTG will reduce VOC emissions from aerospace manufacturing and rework facilities located in ozone nonattainment areas by 3,889 Mg/yr (4,288 tpy). Alternatively, the EPA estimates that the implementation of a national regulation, based on the likely BAC limits and the number of affected facilities, would reduce VOC emissions from aerospace manufacturing and rework facilities located in ozone nonattainment areas by 2,721 Mg/yr (3,000 tpy). The number of facilities in ozone nonattainment areas affected by a national regulation is equal to the number of facilities affected by a CTG. However, the emission reductions

from a CTG are greater due to the inclusion of equipment and work practice standards related to the coating operations, which a regulation under section 183(e) would not include.

In addition, the EPA believes that a CTG would be more effective because it is applicable to aerospace coatings as applied, whereas a national regulation is limited to coatings as supplied. The EPA believes that for aerospace coatings, supplied coatings are often altered by thinning prior to use. Because the EPA does not have authority under section 183(e) to regulate end-users, a national regulation would not be able to prohibit such activities and the actual emission reductions from a regulation may be considerably less if data were available to adjust for thinning emissions. For the foregoing reasons, the EPA believes that a CTG would be more effective in reducing VOC emissions from aerospace coatings in ozone nonattainment areas, and that a CTG may be issued in lieu of a national regulation under section 183(e)(3)(C).

## IV. Shipbuilding and Ship Repair Coatings

### *A. Factors To Consider Regarding the Effectiveness of CTG Compared to a National Regulation*

In evaluating control strategies for VOC emissions from shipbuilding and ship repair coatings, the EPA identified the coatings used by the shipbuilding and ship repair industry and the significant sources of VOC emissions in that industry. The shipbuilding and ship repair industry consists of establishments that build and repair ships, and includes operations such as repainting, conversions, and alterations of ships.

Marine coatings are vital for protecting the ship from corrosive and biotic attacks from the ship's environment. A typical coating system consists of (1) a thin primer coat that provides initial corrosion (oxidation) protection and promotes adhesion of the subsequent coating, (2) one or more intermediate coats that physically protect(s) the primer and may provide additional or special properties, and (3) a topcoat that provides long-term protection for both the substrate and the underlying coatings.

Marine coatings are very complex and serve specific functions such as corrosion protection, heat/fire resistance, and antifouling (used to prevent the settlement and growth of marine organisms on the ship's underwater hull). Specific coating selections are based on the intended use of the ship, ship activity, travel routes, desired time between paintings (service life), the aesthetic desires of the ship owner or commanding officer, and fuel costs. Different coatings are used for these purposes, and each may use one or more solvents (or solvent blends) in different concentrations. Ship owners and paint formulators specify the paints and coating thicknesses to be applied at shipyards.

Solvents are frequently added to coatings by the applicator just prior to application to adjust viscosity. Thinning of coatings is done at most shipyards (regardless of size) even though the paint manufacturers typically state it is usually unnecessary. Weather conditions play a big part in thinning, as do application processes and desired drying times. Solvents are also widely used for equipment cleaning which results in significant VOC emissions. Because VOC emissions in this industry are due to a variety of different sources in the manufacturing process, including the coatings as applied, a national regulation may be of limited effectiveness in reducing VOC emissions from shipbuilding and ship repair coatings. This is primarily due to the limit of the EPA's authority under section 183(e), as previously discussed, to regulate only the shipbuilding and ship repair coatings as supplied to the industry. Because, in practice, the supplied coatings are often thinned prior to application by adding VOC solvents, the ''as-applied'' VOC content of the coating ends up being greater than the ''as-supplied'' VOC content. For this reason a CTG could be as effective, if not more effective, than a national regulation. For the shipbuilding and ship repair industry, consisting of facilities which could be inspected for compliance with State RACT rules, a CTG could provide limits for the coatings as applied and also achieve VOC emission reductions from the implementation of work practice standards for the associated cleaning operations.

### *B. Overview of Shipbuilding and Ship Repair CTG and Expected Emissions Reductions*

Under a separate **Federal Register** notice, the EPA recently released a final CTG for shipbuilding and ship repair operations (surface coating) (61 FR 44050, August 27, 1996) pursuant to section 183(b)(4) of the CAA. The EPA is not seeking comment on the content, or issuance, of that shipbuilding and ship repair CTG as it was issued independently of any requirements of section 183(e). However, for the purpose of determining whether a CTG would be substantially as effective as a rulemaking as required under section 183(e), the following discussion refers to that CTG as an estimate of the potential emission reductions obtainable with a CTG for the shipbuilding and ship repair industry.

The shipbuilding and ship repair CTG applies to shipbuilding and ship repair facilities (i.e., shipyards) which are, or have the potential to become, major VOC sources in ozone nonattainment areas. The CTG for shipbuilding and repair operations (surface coating) was developed in parallel with the NESHAP for this same industry. In establishing the level of control for surface coating operations in the shipbuilding and ship repair industry, the EPA relied on BACM as proposed in the **Federal Register** on December 6, 1994 (59 FR 62681). The type and level of VOC control identified as BACM is based on the marine coating VOC limits being used in California (with some exceptions and modifications). Table 4 presents the various coating categories with the maximum ''as-applied'' VOC content allowed for each. The CTG also includes additional work practice guidelines that apply to solvent cleaning operations and housekeeping measures. The EPA estimates that approximately 100 shipyards will be subject to State regulations based on the CTG. The emission limits and work practice standards are expected to reduce VOC emissions from these shipyards by 1,239 Mg/yr (1,366 tpy). As mentioned earlier, a CTG issued pursuant to section 183(e) would be based on RACT. The EPA believes that for shipbuilding and ship repair coatings RACT and BACM are identical. While typically BACM (''best'') implies more stringent control than RACT (''reasonable''), the shipbuilding industry, as in the case of the aerospace industry, presents such a limited range of controls for a specified industry process that these two levels of control may be identical. Thus, the EPA believes that it is appropriate to rely on these already existing estimated emission reductions, which reflect both BACM and RACT, for the purpose of comparing the effectiveness of a CTG to a regulation under section 183(e).

### *C. Estimate of BAC for Shipbuilding and Ship Repair Coatings*

As discussed previously, the EPA must determine whether a CTG would be substantially as effective as a regulation based on BAC. In making this determination, the EPA has prepared a likely estimate of the emission reductions that could be achieved with a BAC-based regulation. Although the EPA prepared such an estimate, it is important to note that this is only an

estimate of what emission reductions might be achieved with a BAC-based regulation. If the EPA were to proceed with the development of a national BAC regulation, it is possible that the BAC-based regulation may differ from the estimates calculated today.

The EPA believes the use of lower-VOC coatings is the only technologically and economically feasible level of control for shipbuilding and ship repair coatings that the EPA can establish on a category-wide basis. In estimating BAC for shipbuilding and ship repair coatings, the EPA evaluated the work completed to establish the emission controls in the shipbuilding and ship repair CTG issued pursuant to section 183(b) which is based on BACM. Although section 183(b) does not specifically define BACM, the VOC limits for shipbuilding and ship repair coatings established in the CTG and presented in table 4 represent the best performing sources in the industry. Because there is no distinct definition, the EPA believes that limits based on BACM are similar, if not equivalent, to limits that would be established under BAC as required in section 183(e). Thus, the EPA believes it is reasonable to rely on the limits established under BACM as representative of BAC limits for the purpose of comparing the effectiveness of a shipbuilding and ship repair CTG to a national regulation in reducing VOC emissions in ozone nonattainment areas. In this notice, the EPA is not proposing these limits as BAC for the purpose of issuing a national regulation.

*D. Comparison of Effectiveness of Shipbuilding and Ship Repair CTG With National Regulation Based on BAC in Reducing VOC Emissions*

Based on the CTG issued pursuant to section 183(b), the EPA estimated that the shipbuilding and ship repair CTG will reduce VOC emissions from shipyards located in ozone nonattainment areas by 1,239 Mg/yr (1,366 tpy). Of the approximately 187 shipyards located in ozone nonattainment areas, there are approximately 100 facilities which emit 25 tpy or more of VOC (10 tpy for facilities in extreme nonattainment areas) and will, therefore, be subject to State regulations based on the CTG. Alternatively, a national regulation would limit the VOC content of coatings available to all 187 shipyards located in ozone nonattainment areas. However, most of these facilities are very small, such as barge yards with less than 15 employees, and do not use significant quantities of marine coatings which result in significant VOC emissions. The EPA estimates that the implementation of a national regulation, based on the estimated BAC limits and the estimated number of affected facilities, would reduce VOC emissions from shipyards located in ozone nonattainment areas by 1,605 Mg/yr (1,770 tpy).

Although the estimated emission reductions from a national regulation (1,605 Mg/yr (1,770 tpy)) are greater than the estimated emission reductions from a CTG (1,239 Mg/yr (1,366 tpy)), the EPA believes that a CTG would be more effective because it is applicable to shipbuilding and ship repair coatings as applied, whereas a national regulation is limited to coatings as supplied. The EPA believes that many shipyard coaters routinely add thinning solvent to coatings prior to application, increasing the VOC content of the coatings as applied. Because the EPA does not have authority under section 183(e) to regulate end-users, a national regulation would not be able to prohibit such activities and the actual emission reductions estimates from a regulation may be considerably less if data were available to adjust for thinning emissions. A CTG could effectively limit emissions from ''as-applied'' coatings which take into account any thinning solvents added to the supplied coating prior to application. For the foregoing reasons, the EPA believes that a CTG would be substantially as effective in reducing VOC emissions from shipbuilding and ship repair coatings in ozone nonattainment areas, and that a CTG may be issued in lieu of a national regulation under section 183(e)(3)(C).

## V. Proposed Determination

Based on the above analyses, the EPA has determined that the recently finalized wood furniture CTG and the draft aerospace CTG being developed will reduce VOC emissions in ozone nonattainment areas by 18,500 Mg/yr (20,400 tpy) and 3,889 Mg/yr (4,288 tpy), respectively. These estimated reductions from the CTG are greater than the estimated reductions in ozone nonattainment areas from a national regulation for wood furniture coatings and aerospace coatings, 14,234 Mg/yr (15,689 tpy) and 2,721 Mg/yr (3,000 tpy), respectively. Because the CTG for the wood furniture and aerospace industries are likely to be more effective in reducing VOC emissions than national regulations developed under section 183(e), the EPA has determined that a CTG is substantially as effective as a national regulation in reducing VOC emissions and, therefore, may issue CTG in lieu of national regulations for wood furniture and aerospace coatings under section 183(e).

In the case of shipbuilding and ship repair coatings, the EPA believes that the emission reductions obtainable through a CTG, recommending limits on ''as-applied'' coatings, would be as much as reductions achieved by a national regulation setting limits for ''as-supplied'' coatings. Therefore, the EPA has determined that a CTG is substantially as effective as a national regulation and may issue a CTG in lieu of a national regulation for shipbuilding and ship repair coatings under section 183(e).

## VI. Cost-Effectiveness

The following information may be of interest to readers of todays notice, and is presented here solely for informational purposes. The cost-effectiveness estimates for the wood furniture, aerospace, and shipbuilding and ship repair CTG were calculated under separate actions during the development of the CTG. The previously issued wood furniture CTG has a cost-effectiveness of $1089/Mg. The cost-effectiveness of the aerospace and shipbuilding and ship repair CTG cannot be precisely calculated because of the interrelationship of costs and emission reductions with the concomitant NESHAP for these standards. The final shipbuilding and ship repair CTG estimated a cost effectiveness of $846/Mg; and the draft aerospace CTG did not quantify the additional costs resulting from the CTG, but concluded that they are negligible.

## VII. Solicitation of Comments

The Administrator welcomes comments from interested persons on the proposed determination that RACT-based CTG would be substantially as effective as BAC-based national regulations for the wood furniture manufacturing, aerospace, and shipbuilding and ship repair (coatings) industries. The Administrator is specifically requesting factual information that may support either the approach taken or an alternative approach. To receive proper consideration, documentation or data should be provided to support the comments.

## VIII. Administrative Requirements

*A. Public Hearing*

A public hearing will be held, if requested, to provide opportunity for interested persons to make oral presentations regarding the proposed determinations in accordance with section 307(d)(5) of the CAA. Persons wishing to make an oral presentation on the EPA's proposed determinations that

CTG's may be issued in lieu of regulations for wood furniture, aerospace, and shipbuilding and ship repair coatings should contact the EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air and Radiation Docket address given in the **ADDRESSES** section of this preamble, and should refer to Docket No. A–96–23.

A verbatim transcript of the hearing and any written statements will be available for public inspection and copying during normal working hours at the EPA's Air and Radiation Docket in Washington, DC (see **ADDRESSES** section of this preamble).

*B. Docket*

The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this proposed determination. The principal purposes of the docket are: (1) To allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the decision making process, and (2) to serve as the record in case of judicial review (section 307(d)(7)(A) of the CAA).

*C. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

*D. Administrative Designation and Regulatory Analysis*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a regulation that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof.

(4) Raise novel legal or policy issues arising out of legal mandates, the Presidents's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, OMB has notified the EPA that it considers this a ''significant regulatory action'' within the meaning of the executive order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the docket (see **ADDRESSES**).

*E. Regulatory Flexibility*

Because today's notice is not a rulemaking, the EPA has not prepared a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (Public Law 96–354, September 19, 1980).

*F. Unfunded Mandates Act*

Because today's notice is not a rulemaking, the requirements of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) do not apply to this action.

TABLE 1.—CTG EMISSION LIMITS

| Reference control technology | Emission limit, kg VOC/kg solids |
|---|---|
| Waterborne: | |
| —Topcoats | 0.8 |
| —Sealer | No limit. |
| High solids: | |
| —Sealer | 1.9 |
| —Topcoat | 1.8 |
| —Vinyl sealers | 2.3 |
| —Conversion varnish topcoats | 2.0 |

TABLE 2.—CTG WORK PRACTICE STANDARDS

| Emission source | Work practice |
|---|---|
| **Finishing operations** | |
| Transfer equipment leaks | Develop written inspection and maintenance plan to address and prevent leaks. Minimum inspection frequency of 1/month. |
| Storage containers, including mixing equipment | Keep covered when not in use. |
| Application equipment | Discontinue use of conventional air spray guns.[a] |
| **Cleaning Operations** | |
| Gun/line cleaning | Collect cleaning solvent into a closed container; cover all containers when not in use. |
| Spray booth cleaning | Limit use of organic solvents. |
| Washoff/general cleaning | Keep washoff tank covered when not in use;<br>Minimize dripping by tilting and/or rotating the part to drain as much solvent as possible and allowing sufficient dry time;<br>Maintain a log of the quantity and type of solvent used for washoff and cleaning;<br>Maintain a log of the number of pieces washed off and the reason for the washoff. |
| **Miscellaneous** | |
| Operator training | Train all operators in proper application, cleanup, and equipment use. |
| Implementation plan | Develop a plan to implement work practice standards and maintain onsite. |

[a] Air guns will be allowed only in the following instances:
—When they are used in conjunction with coatings that emit less than 1.0 kg VOC per kg of solids used;
—Touch up and repair under limited conditions;
—When spray is automated;
—When add-on controls are employed;
—If the cumulative application is less than five.

TABLE 3.—AEROSPACE SPECIALTY COATINGS VOC CONTENT LIMITS (g/l)*

| Coating type | Limit |
|---|---|
| Ablative Coating | 600 |
| Adhesion Promoter | 890 |
| Adhesive Bonding Primer: | |
| Cured at 250°F or below | 850 |
| Cured above 250°F | 1,030 |
| Adhesives: | |
| Commercial Interior Adhesive | 760 |
| Cyanoacrylate Adhesive | 1,020 |
| Fuel Tank Adhesive | 620 |
| Nonstructural Adhesive | 360 |
| Rocket Motor Bonding Adhesive | 890 |
| Rubber-based Adhesive | 850 |
| Structural Autoclavable Adhesive | 60 |
| Structural Nonautoclavable Adhesive | 850 |
| Antichafe Coating | 660 |
| Chemical Agent-Resistant Coating | 550 |
| Clear Coating | 720 |
| Commercial Exterior Aerodynamic Structure Primer | 650 |
| Compatible Substrate Primer | 780 |
| Corrosion Prevention Compound | 710 |
| Cryogenic Flexible Primer | 645 |
| Cryoprotective Coating | 600 |
| Electric or Radiation-Effect Coating | 800 |
| Electrostatic Discharge and Electromagnetic Interference (EMI) Coating | 800 |
| Elevated Temperature Skydrol Resistant Commercial Primer | 740 |
| Epoxy Polyamide Topcoat | 660 |
| Fire-Resistant (interior) Coating | 800 |
| Flexible Primer | 640 |
| Flight-Test Coating: | |
| Missile or Single Use Aircraft | 420 |
| All Other | 840 |
| Fuel-Tank Coating | 720 |
| High-Temperature Coating | 850 |
| Insulation Covering | 740 |
| Intermediate Release Coating | 750 |
| Lacquer | 830 |
| Maskants: | |
| Bonding Maskant | 1,230 |
| Critical Use and Line Sealer Maskant | 1,020 |
| Seal Coat Maskant | 1,230 |
| Metallized Epoxy Coating | 740 |
| Mold Release | 780 |
| Optical Anti-Reflective Coating | 750 |
| Part Marking Coating | 850 |
| Pretreatment Coating | 780 |
| Rain Erosion-Resistant Coating | 850 |
| Rocket Motor Nozzle Coating | 660 |
| Scale Inhibitor | 880 |
| Screen Print Ink | 840 |
| Sealant | |
| Extrudable/Rollable/Brushable Sealants | 240 |
| Sprayable Sealants | 600 |
| Self-priming Topcoat | 420 |
| Silicone Insulation Material | 850 |
| Solid Film Lubricant | 880 |
| Specialized Function Coating | 890 |
| Temporary Protective Coating | 320 |
| Thermal Control Coating | 800 |
| Wet Fastener Installation Coating | 675 |
| Wing Coating | 850 |

*Grams per liter VOC (g/l) means a weight of VOC per combined volume of VOC and coating solids, less water and exempt compounds.

TABLE 4.—VOC LIMITS FOR MARINE COATINGS

| Coating category | VOC limits [a,b] | | |
|---|---|---|---|
| | Grams/liter coating (minus water and exempt compounds) | Grams/liter solids [c] | |
| | | t≥4.5°C | t<4.5°C [d] |
| General use | 340 | 571 | 728 |
| Specialty: | | | |
| Air flask | 340 | 571 | 728 |
| Antenna | 530 | 1,439 | |
| Antifoulant | 400 | 765 | 971 |
| Heat resistant | 420 | 841 | 1,069 |
| High-gloss | 420 | 841 | 1,069 |
| High-temperature | 500 | 1,237 | 1,597 |
| Inorganic zinc high-build | 340 | 571 | 728 |
| Military exterior | 340 | 571 | 728 |
| Mist | 610 | 2,235 | |
| Navigational aids | 550 | 1,597 | |
| Nonskid | 340 | 571 | 728 |
| Nuclear | 420 | 841 | 1,069 |
| Organic zinc | 360 | 630 | 802 |
| Pretreatment wash primer | 780 | 11,095 | |
| Repair and maint. of thermoplastics | 550 | 1,597 | |
| Rubber camouflage | 340 | 571 | 728 |
| Sealant for thermal spray aluminum | 610 | 2,235 | |
| Special marking | 490 | 1,178 | |
| Specialty interior | 340 | 571 | 728 |
| Tack coat | 610 | 2,235 | |
| Undersea weapons systems | 340 | 571 | 728 |
| Weld-through precon. primer | 650 | 2,885 | |

[a] The limits are expressed in two sets of equivalent units. Either set of limits may be used to demonstrate compliance.
[b] To convert from g/l to lb/gal, multiply by (3.785 l/gal.)(1/453.6 lb/g) or 1/120. For compliance purposes, metric units define the standards.
[c] VOC limits expressed in units of mass of VOC per volume of solids were derived from the VOC limits expressed in units of mass of VOC per volume of coating assuming the coatings contain no water or exempt compounds and that the volumes of all components with a coating are additive.
[d] These limits apply during cold-weather time periods (i.e., temperatures below 4.5 °C). Cold-weather allowances are not given to coatings in categories that permit less than 40 percent solids (nonvolatiles) content by volume. Such coatings are subject to the same limits regardless of weather.

Dated: August 15, 1997.

**Carol M. Browner,**

*Administrator.*

[FR Doc. 97–22363 Filed 8–21–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5879–9]**

## Notice of Issuance of PSD Permit to Port Townsend Paper Corporation, Port Townsend, Washington

Notice is hereby given that on June 18, 1997, the Environmental Protection Agency and Washington Department of Ecology issued a prevention of significant deterioration (PSD) permit to the Port Townsend Paper Corporation to construct a 245 mmBTU/hour package boiler in Port Townsend, Washington.

The PSD permit has been issued under 40 CFR 52.21 subject to certain conditions specified in the permit. The final permit decision shall become effective 30 days after September 22, 1997 unless review is requested under 40 CFR 124.19. Petition for review of this final PSD permit decision must be filed on or before September 22, 1997 in accordance with 40 CFR 124.19.

Copies of the PSD permit and administrative record are available for public inspection upon request at the following location: Washington Department of Ecology, 300 Desmond Drive, Lacy, Washington 98504.

Dated: August 11, 1997.

**Anita Frankel,**

*Director, Office of Air Quality.*

[FR Doc. 97–22362 Filed 8–21–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5880–2]**

## Interpretation of New Drinking Water Requirements Relating to Lead Free Plumbing Fittings and Fixtures

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 1417(a)(3) of the Safe Drinking Water Act (SDWA), as amended makes it unlawful for any person to introduce into commerce after August 6, 1998 any pipe, or any pipe or plumbing fitting or fixture that is not lead free. In section 1417(e) as added by the 1996 SDWA Amendments, Congress directed EPA to provide assistance for the development of voluntary standards and testing protocols for the leaching of lead from new plumbing fittings and fixtures relating to drinking water. This notice confirms EPA's position that performance standards for the leaching of lead from new plumbing fittings and fixtures have been established, as directed by the SDWA.

The SDWA requires that, if a voluntary standard for the leaching of lead from new plumbing fittings and fixtures is not established by August 1997, then EPA must promulgate regulations setting a performance based standard for lead leaching from such components. The National Sanitation Foundation (NSF) established a voluntary standard, NSF Standard 61, section 9, governing the leaching of lead

from new plumbing fittings and fixtures in September 1994. EPA participated in the development of the NSF Standard because the Agency felt that, rather than promulgating a regulation, limiting the amount of lead leaching from brass and other alloys into drinking water would be best achieved through a voluntary standard, which is fully protective on a health basis and technologically achievable by industry in a reasonable period of time. In the Agency's view, NSF Standard 61, section 9 satisfies the requirement of section 1417(e), that a voluntary standard be established. Thus, the obligation to issue regulations is not triggered. See S. Rep. 104–169 ''104th Cong.), at 95.'' Copies of NSF Standard 61, and the listings of products meeting this standard may be obtained from NSF International, 3475 Plymouth Road, PO Box 130140, Ann Arbor, MI 48113–0140. The telephone number is 313–769–8010.

**FOR FURTHER INFORMATION CONTACT:** Peter Lassovszky, Office of Ground Water and Drinking Water (4607), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. For further information, call the U.S. EPA Safe Drinking Water Hotline between 8:30 am and 5 pm Eastern Time, Monday through Friday excluding Federal holidays, by telephoning toll-free 1–800–426–4791 nationwide.

Dated: August 13, 1997.

**Robert Perciasepe,**

*Assistant Administrator, Office of Water.*

[FR Doc. 97–22360 Filed 8–21–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–5483–5]**

## Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed August 11, 1997 Through August 15, 1997 Pursuant to 40 CFR 1506.9.

*EIS No. 970313*, FINAL EIS, AFS, UT, Sheepherder Hill Sanitation Salvage Sale, Management of Selected Vegetation Stands, Implementation, Uinta National Forest, Spanish Fork District, Nebo Management Area, Utah County, UT, Due: September 22, 1997, Contact: Mark Sensibaugh (801) 623–2735.

*EIS No. 970314*, DRAFT EIS, BLM, WY, Powder River (WYW136142) and Thundercloud (WYW136458) Coal Lease Applications, Federal Coal Leasing, Campbell and Converse Counties, WY, Due: October 28, 1997, Contact: Nancy Doelger (307) 261–7627.

*EIS No. 970315*, FINAL EIS, FHW, PA, Kittanning By-Pass/PA–6028, Section 015 Extension of the Allegheny Valley Expressway, existing Allegheny Valley Expressway to the Traffic Route 28/66 and Traffic Route 85 Intersection, Funding and COE Section 404 and EPA NPDES Permits Issuance, Armstrong County, PA, Due: September 22, 1997, Contact: Ronald W. Carmichael (717) 782–2222.

*EIS No. 970316*, FINAL EIS, NPS, WA, OR, ID, MT, WA, ID, MT, Nez Perce National Historical Park and Big Hole National Battlefield General Management Plan, Implementation, Asotin and Okanogan Counties, WA; Wallowa County, OR; Idaho, Lewis, Nez Perce, Clearwater and Clank Counties, ID; and Blaine, Yellowstone and Beaverhead Counties, MT, Due: September 22, 1997, Contact: Frank Walker (208) 843–2261.

*EIS No. 970317*, DRAFT EIS, FHW, CA, I–880 Interchange at Dixon Landing Road Reconstruction Improvements, Funding and COE Section 404 Permit, Fremont, Milpitas, Alameda and Santa Clara Counties, CA, Due: October 7, 1997, Contact: John R. Schultz (916) 498–5041.

*EIS No. 970318*, FINAL EIS, NPS, NB, SD, NB, SD, Missouri/Niobrara/Verdigre Creek National Recreational Rivers General Management Plan, Implementation, Gregory, Charles Mix and Bon Homme Counties, SD and Knox and Boyd Counties, NB, Due: September 22, 1997, Contact: Warren Hill (402) 336–3970.

*EIS No. 970319*, SECOND DRAFT EIS (T, FAA, NY, Terminal Doppler Weather Radar (TDWR) Installation and Operation, Serve the John F. Kennedy International Airports (JFK) and La Guardia (LFA), Site Specific, Air Station Brooklyn, Borough of Queens, King County, NY, Due: October 10, 1997, Contact: Jerome Schwartz (202) 267–9841.

*EIS No. 970320*, FINAL EIS, COE, CA, Magpie Creek Channel Section 205 Flood Control Investigation Project, Improvements, Implementation, National Economic Development Plan and Levee Plan, NPDES Permit Issuance, McCellan Air Force Base, City of Sacramento, Sacramento County, CA, Due: September 22, 1997, Contact: Joseph Broadhead (916) 264–7622.

*EIS No. 970321*, DRAFT EIS, GSA, CA, United States Border Facility, Tecate Port of Entry (POE) Realignment and Expansion, NPDES Permit, City of Tecate, San Diego County, CA, Due: October 06, 1997, Contact: Rosanna Nieto (415) 522–3490.

*EIS No. 970322*, FINAL EIS, FHW, AZ, Pima Freeway—Loop 101, Construction, I–17 and Scottsdale Road, Funding, NPDES and COE Section 404 Permits, Maricopa County, AZ, Due: September 22, 1997, Contact: Kenneth Davis (602) 379–3646.

*EIS No. 970323*, DRAFT EIS, UAF, WI, Hardwood Air-to-Surface Gunnery Range Expansion and Associated Airspace Actions, Military Operation Areas (MOA), WI, Due: November 21, 1997, Contact: Harry A. Knudsen (301) 836–8143.

*EIS No. 970324*, FINAL EIS, NAS, AL, CA, MS, Engine Technology Support, Implementation, With Emphases on Liquid Oxygen and Kerosene, Advanced Space Transportation Program, Test Sites: Marshall Space Flight Center (MSFC) in Huntsville, AL; Stennis Space Center (SSC) near Bay St. Louis, MS and Phillips Laboratory, Edward Air Force Base, CA, Due: September 22, 1997, Contact: Carsten Goff (202) 358–0007.

*EIS No. 970325*, FINAL EIS, UAF, CO, KS, WY, NM, NB, Colorado Airspace Initiative, Modifications to the National Airspace System, such as the F–16 Aircraft and Aircrews of the 140th Wing of the Colorado Air National Guard, also existing Military Operations Areas (MOAs) and Military Training Routes (MTRs), CO, NM, KS, NB and WY, Due: September 22, 1997, Contact: Harry A. Knudsen (301) 836–8143.

### Amended Notices

*EIS No. 970312*, FINAL EIS, FAA, NC, ADOPTION—Camp Lejeune Marine Corps Base Camp, Expansion and Realignment for Additional Training Needs, Implementation, Onslow County, NC, Due: September 29, 1997, Contact: Mary Summer (202) 267–9183. Published FR—08–15–97—Due Date correction.

Dated: August 19, 1997.

**William D. Dickerson,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 97–22400 Filed 8–21–97; 8:45 am]

BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–5483–6]**

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 28, 1997 Through August

01, 1997 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 04, 1997 (62 FR 16154).

**Draft EISs**

*ERP No. D–AFS–L61214–OR* Kalmiopsis Wilderness, Approval for Motorized Vehicular Access to the Private Property within the Chetco River, Illinois Valley Ranger District, Siskiyou National Forest, Curry County, OR.

*Summary:* Based upon our abbreviated review, EPA does not foresee having any environmental concerns to the proposed project.

*ERP No. D–AFS–L65286–OR* Rating EC2, Summit Fire Recovery Forest Restoration Project, Implementation, Malheur National Forest, Long Creek Ranger District, Grant County, OR.

*Summary:* EPA expressed environmental concerns about potential adverse impacts do not exacerbate existing conditions nor cause additional environmental impacts.

*ERP No. D–AFS–L65290–ID* Rating EC2, North Lochsa Face Landscape and Watershed Assessment Project, Implementation, Clearwater National Forest, Lochsa Ranger District, Idaho County, ID.

*Summary:* EPA expressed environmental concerns about potential adverse impacts to air quality concerns from burning, potential water quality impacts to riparian areas and the Wild and Scenic River Corridor.

*ERP No. D–BLM–L65273–ID* Rating EC2, Owyhee Resource Management Plan, Implementation, Lower Snake River District, Owyhee County, ID.

*Summary:* EPA expressed environmental concerns about potential adverse impacts on water and air quality.

*ERP No. D–NAS–A12041–00* Rating EC2, X–33 Advanced Technology Demonstrator Vehicle Program, Final Design, Construction and Testing, Implementation, Approvals and Permits Issuance, CA, UT and WA.

*Summary:* EPA expressed environmental concerns regarding potential noise, water and air impacts. Specifically, EPA would like more information regarding compliance with section 404 of the Clean Water Act, analysis of impacts to global warming and additional information regarding NASA's noise analysis.

**Final EISs**

*ERP No. F–AFS–K65183–CA* Whale Rock Analysis Area Multi-Resource Improvement and Management Plan, Implementation, Eldorado National Forest, Pacific Southwest Region, Eldorado County, CA.

*Summary:* EPA expressed environmental continuing concern with the project's ratio of new road construction to road closure/obilterations, and requested that the Forest Service conduct an analysis of additional road closure/obiteration opportunities prior to initiation of project activities.

*ERP No. F–AFS–L65100–WA* Snoqualmie Pass Adaptive Management Area Plan, Implementation, Wenatchee and Mt. Baker-Snoqualmie National Forests, Cle Elum and North Bend Ranger Districts, Kittitas and King Counties, WA.

*Summary:* EPA expressed environmental concerns based on the potential adverse impacts on surface water, aquatic resources, and habitat connectivity for wildlife mitigation.

*ERP No. F–NRC–A09822–00* 10 CFR part 20: Support of Rulemaking on Radiological Criteria for Decommissioning of NRC-Licensed Nuclear Facilities (NUREG–1496), Implementation, Generic EIS.

*Summary:* EPA remains in fundamental disagreement with NRC's choice of appropriate levels for clean-up of decommissioned NRC licensed facilities. EPA believes that clean-ups of radioactivity should ensure both that no member of the public receive greater than 15 millirem per year and that groundwater that is a current or potential future source of drinking water be protected to the Maximum Contaminant Levels (MCLs) found at 40 CFR part 141.

*ERP No. FS–NAS–A12040–00* Cassini Spacecraft Exploration Mission to Explore the Planet Saturn and its Moons, Implementation, Updated Information concerning Potential Accidents during the Launch and Cruise Phase of the Mission.

*Summary:* EPA continued to have environmental concerns related to the documents use of out-dated EPA guidance. EPA requested that the new guidance be used to assess remediating contaminated areas.

Dated: August 19, 1997.

**William D. Dickerson,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 97–22401 Filed 8–21–97; 8:45 am]

BILLING CODE 6560–50–U

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5879–8]**

## Underground Injection Control Program Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Monsanto Chemical Company, (Monsanto)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final decision on petition reissuance.

**SUMMARY:** Notice is hereby given that reissuance of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Monsanto, for the Class I injection wells located at Chocolate Bayou, Alvin, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Monsanto, of the specific restricted hazardous waste identified in the exemption reissuance, into the Class I hazardous waste injection wells at the Chocolate Bayou, Alvin, Texas facility specifically identified in the modified exemption, for as long as the basis for granting an approval of this exemption remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued June 10, 1997, and closed on July 25, 1997. All comments have been addressed and have been considered in the final decision. This decision constitutes final Agency action and there is no Administrative appeal.

**DATES:** This action is effective as of August 15, 1997.

**ADDRESSES:** Copies of the reissued petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water

Quality Protection Division, Source Water Protection Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

**FOR FURTHER INFORMATION CONTACT:** Philip Dellinger, Chief, Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–7165.

**Oscar Ramirez, Jr.,**

*Acting Director, Water Quality Protection Division.*

[FR Doc. 97–22361 Filed 8–21–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5880–1]**

## Board of Scientific Counselors (BOSC) Subcommittee Review of the National Center for Environmental Assessment (NCEA)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting of the Board of Scientific Counselors (BOSC) subcommittee to review the National Center for Environmental Assessment (NCEA).

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App.2), notice is hereby given that the Environmental Protection Agency (EPA), Office of Research and Development (ORD), Board of Scientific Counselors (BOSC) Subcommittee will meet to review the National Center for Environmental Assessment on Monday, September 8 and Tuesday, September 9, 1997. The meeting will be held in the Wilson/Glebe Room of the Holiday Inn Arlington at Ballston, 4610 North Fairfax Drive, Arlington, Virginia and will begin at 8:00 a.m. and recess at approximately 5:00 p.m. on Monday, September 8. On Tuesday, September 9, a Subcommittee writing session will begin at 8:00 a.m and adjourn at 1:00 p.m. Following the writing session, a wrap-up discussion summarizing the preliminary findings and conclusions of the Subcommittee will be held from 1:00 p.m.—3:00 p.m. on Tuesday. The BOSC Subcommittee Review meeting will adjourn at 3:00 p.m. All times are Eastern time. The meeting is open to the public. Any member of the public wishing to make comments at the meeting should contact Shirley R. Hamilton, Designated Federal Official, Office of Research and Development (8701R), 401 M Street, S.W., Washington, DC 20460; by telephone at (202) 564–6853. In general, each individual making an oral presentation will be limited to three minutes. Anyone desiring a draft BOSC meeting agenda may fax their request to Shirley R. Hamilton at (202) 565–2444.

**DATES:** The meeting will be held September 8 and 9, 1997.

**ADDRESSES:** The meeting will be held in the Wilson/Glebe Room of the Holiday Inn Arlington at Ballston, 4610 North Fairfax Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Shirley R. Hamilton, Designated Federal Official, Office of Research and Development (8701R), 401 M Street, SW, Washington, DC 20460; by telephone at (202) 564–6853.

Dated: August 15, 1997.

**William H. Farland,**

*Director, National Center for Environmental Assessment.*

[FR Doc. 97–22359 Filed 8–21–97; 8:45 am]

BILLING CODE: 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[PF–757; FRL–5737–8]**

## Notice of Filing of Pesticide Petitions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition (PP 7F4827), submitted by Abbott Laboratories, proposing the establishment of a regulation for an exemption from the requirement of a tolerance for residues of the microbial pesticide, active ingredient, *Bacillus sphaericus*, when used in or on all food and feed crops.

**DATES:** Comments, identified by the docket control number PF–757, must be received on or before September 22, 1997.

**ADDRESSES:** By mail submit written comments to: Public Information and Records Integrity Branch (7506C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Willie Nelson, (PM) 90, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 5th floor, CS1, 2800 Crystal Drive, Arlington, VA. 22202, (703) 308–8682; e-mail: nelson.willie@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–757] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will

also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–757] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

**List of Subjects**

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 13, 1997.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

**Summaries of Petitions**

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

**Abbott Laboratories**

*PP 7F4827*

EPA has received a pesticide petition (PP 7F4827) from Abbott Laboratories, 1401 Sheridan Road, Dept. 28R, Bldg A1, North Chicago, IL 60064-4000, proposing pursuant to section 408 (d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of the pesticide type, *Bacillus sphaericus* in or on the raw agricultural commodities.

Pursuant to the section 408 (d)(2)(A)(i) of the FFDCA, as amended, Abbott Laboratories has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by Abbott Laboratories and EPA has not fully evaluated the merits of the petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary was not clear that it reflected the conclusion of the petitioner and to necessarily EPA.

*A. Proposed Use Practices*

For the control of mosquito larvae, uniform application is recommended by either aerial or conventional ground equipment at rates up to 0.46 billion B.S. ITU/acre. Applications should occur when mosquito larvae are present at an interval of 1-4 weeks.

*B. Product Identity/Chemistry*

1. The pesticide and corresponding residues are identified as Bacillus sphaericus.

2. Bacillus sphaericus is a naturally occurring organism, and residues occurring at time of harvest are anticipated to approximate those of naturally occurring levels.

3. Since Abbott Laboratories is proposing to establish an exemption from the requirement of a tolerance without numerical limitation, an analytical method for detecting and measuring levels of the pesticide residue is considered unnecessary.

*C. Mammalian Toxicological Profile*

The mammalian toxicology data submitted in support of the exemption from the requirement for a tolerance include evaluation of toxicity, pathogenicity and infectivity of *Bacillus sphaericus*.

An acute oral toxicity/pathogenicity study was conducted with *Bacillus sphaericus* technical material in rats. An oral dose of approximately 1 x $10^8$ colony forming units (CFU) administered to rats resulted in rapid clearance during the 20-day post-treatment observation period. A pattern of clearance during the 49-day post treatment period was established following an intratracheal instillation of approximately 1 x $10^8$ CFU. Similarly, a pattern of clearance over a 35-day post-treatment period was observed following an intravenous dose of approximately 1 x $10^7$ CFU. There were no mortalities, no evidence of pathogenicity or treatment-related toxicity in rats given an oral, intratracheal installatin or intravenous dose.

In an acute oral toxicity study, *Bacillus sphaericus* technical material caused no deaths in rats given a dose of 5,000 mg/kg; therefore the acute oral $LD_{50}$ was greater than 5,000 mg/kg. There was no mortality in rabbits over the 14-day observation period following a 2,000 mg/kg dermal application for 24 hours; thus, the acute dermal $LD_{50}$ was greater than 2,000 mg/kg. In a 4-hour acute inhalation toxicity study in rats, the maximum attainable concentration was 0.09 mg/L, with 13.3% of the particles having a mass median aerodynamic diameter of >10 microns. Since there was no mortality or no clinical signs during exposure or the 14-day observation period, the 4-hour inhalation $LC_{50}$ was greater than 0.09 mg/L. Dermal irritation of *Bacillus sphaericus* technical material was described by Abbott Laboratories as moderately irritating to rabbit skin at 72 hours. Irritation and iridal effects following a 100 mg aliquot of *Bacillus sphaericus* placed in the eye of rabbits were no longer present at day 10 post-treatement.

1. *Conclusions*. Based on the toxicity data summarized above, *Bacillus sphaericus*, is not pathogenic and does not demonstrate any systemic toxicity.

2. Genotoxicity, reproductive and developmental toxicity, subchronic toxicity and chronic toxicity testing were not performed on this microbial pest control agent. The low acute toxicity, lack of survival, replication; infectivity and lack of persistence of this organism does not warrant need for this level of testing.

*D. Aggregate Exposure*

For the purpose of assessing the potential dietary exposure under this exemption, Abbott considered that under this exemption, *Bacillus sphaericus* could be present on all RACs. Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources. Based on the available studies used to assess environmental risk, and the fact that *Bacillus sphaericus* is a naturally occurring organism which is susceptible to chlorine treatment, exposure residues are not expected in drinking water. The potential for non-occupational, non-dietary exposure to the general population is, thus, not expected to be significant.

*E. Cumulative Effects*

Cumulative effects of *Bacillus sphaericus* and other substances that have a common mechanism of toxicity have been considered. Due to the lack of mammalian toxicity, it is the opinion of Abbott Laboratories that consideration of a common mechanism of toxicity is not appropriate at this time. Abbott Laboratories has concluded that toxic effects produced by *Bacillus sphaericus* would not be cumulative with those of any other compounds.

*F. Safety Determination*

1. *U.S. population*. In general, *Bacillus sphaericus* is a naturally occurring organism which has undergone no genetic modifications.

The low toxicity of the subject active ingredient is demonstrated by the data summarized above. Based on this information, it can be concluded that aggregate exposure to Bacillus sphaericus over a lifetime will not pose appreciable risks to human health. There is reasonable certainty that no harm will result from aggregate exposure to residues of *Bacillus sphaericus* and, consequently, exempting *Bacillus sphaericus* from the requirement of a tolerance is considered safe.

2. *Infants and children*. It is the opinion of Abbott Laboratories that the toxicity and exposure data are sufficiently complete to adequately address the potential for additional sensitivity of infants and children to residues of *Bacillus sphaericus*. A determination of safety for infants and children can be made due to the insignificant exposure expected beyond naturally occurring background levels and the low acute toxicity of this microbial insecticide. It can be concluded with reasonable certainty that no harm will result to infants and children from aggregate exposure to *Bacillus sphaericus* residues.

*G. Existing Tolerances*

Abbott Laboratories is not aware of any existing tolerances or tolerance exemption for *Bacillus sphaericus*.

[FR Doc. 97–22374 Filed 8–21–97; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

**[PF–756; FRL–5737–2]**

## Notice of Filing of Pesticide Petitions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

**DATES:** Comments, identified by the docket control number PF–756, must be received on or before September 22, 1997.

**ADDRESSES:** By mail submit written comments to: Public Information and Records Integrity Branch (7506C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Shanaz Bacchus (PM) 90, Biopesticides and Pollution Prevention Division, (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 5th floor, CS1, 2800 Crystal Drive, Arlington, VA. 22202, (703) 308–8097; e-mail: bacchus.shanaz@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–756] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–756] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

### List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 17, 1997.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

### Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

### 1. BioWorks, Inc.

*PP 6F4650*

EPA has received a pesticide petition from Bioworks, Inc., 122 North Genesee Street, Geneva, New York 14456, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. section 346a(d), to amend 40 CFR Part 180 to establish an exemption from the requirement of a tolerance for *Trichoderma harzianum* Rifai strain KRL-AG2 in or on all raw agricultural commodities, except mushrooms.

*A. Residue Chemistry*

1. *Plant metabolism*. The active ingredient is *Trichoderma harzianum* Rifai strain KRL-AG2 (a.k.a. T–22), a strain of a naturally occurring soil microorganism. This organism controls plant diseases mechanically and is not absorbed or otherwise incorporated into the plant. It has no affect on plant metabolism. This organism controls plant disease by competing with plant pathogens for root and foliar surfaces for the establishment of fungal colonies. *Trichoderma harzianum* Rifai strain KRL-AG2 also controls plant pathogens by the mechanism of mycoparasitism.

2. *Analytical method*. BioWorks has not proposed an analytical method for assessing residues because this organism is naturally occuring, non-toxic and present in a wide variety of habitats, including water. Because there is a natural background population of this organism it would be impossible to distinguish between natural and introduced microbial populations and to establish and enforce any tolerance for this organism. *Trichoderma harzianum* (T-22) does not have adverse affects on the environment, animals or humans. This organism does not persist when applied to foliage or fruit. Ordinary environmental conditions cause rapidly declining population levels of the microbe soon after application to above-ground plant parts.

3. *Magnitude of residues*. The only residue expected at harvest is the background level of *Trichoderma harzianum* (T-22) currently present on agricultural commodities. Any *Trichoderma harzianum* (T-22), either naturally occurring or applied, remaining at harvest will be removed or rendered nonviable by the usual processing of the food or feed.

*B. Toxicological profile*

1. *Acute toxicity*. Strain T–22 was determined to be non-toxic during the initial Tier I toxicological tests. This pesticide is currently registered for seed treatments for which an exemption from tolerance exists for certain raw agricultural commodities (40 CFR 180.1102). In PR Notice 95–3, June 7, 1995 the Agency included this fungus in a list of low risk pesticides qualifying for reduced restricted entry intervals.

a. *Acute oral toxicity/pathogenicity*. Ingestion of this product produced no apparent signs of toxicity, pathogenicity, or infection following a 21–day test period in both female and male rats. The active ingredient is classified as toxicity category IV for oral toxicity.

b. *Acute pulmonary toxicity/ pathogenicity*. A high concentration test article given by intratracheal injection to male and female rats produced no apparent signs of toxicity or pathogenicity. The active ingredient is classified as toxicity category IV for pulmonary toxicity.

c. *Primary dermal and eye irritation*. EPA granted a waiver for the acute dermal toxicity studies in a letter dated June 28, 1990. The active ingredient is classified as toxicity category III for dermal exposure.

d. *Acute intravenous toxicity*. A high concentration test article was given by intravenous injection to male and female rats. Not apparent signs of toxicity or pathogenicity were observed.

e. *Hypersensitivity incidents reported*. No incidents of hypersensitivity in humans have been reported during the production and handling of this active ingredient.

f. *Immune response*. This organism is non-toxic and naturally occurring. There is no evidence of any negative impact on the immune systems of humans.

g. *Tissue culture*. All available literature indicates that the use of this organism as a pesticide is safe for humans.

Based on the results of the Tier I tests there was no indication that subchronic or chronic studies were required.

2. *Metabolite toxicology*. Strain T–22 produces no known metabolites of any environmental or health concern. This organism controls plant disease by competing with plant pathogens for root and foliar surfaces for the establishment of fungal colonies and by mycoparasitism.

*C. Aggregate Exposure*

1. *Dietary exposure*. *Trichoderma harzianum* (T-22) is a non-toxic, naturally occurring fungi. There is no evidence that it presents any risk to animals or humans. It is present in many different types of environments worldwide. Because of its ubiquitous nature all humans and animals have some natural exposure to the organism. Proposed application methods, uses, and application rates will not result in a sustained increase in the population levels of this organism beyond the naturally occurring background levels of *Trichoderma harzianum* (T-22).

2. *Food*. Use of strain T–22 as a pesticide will result in little or no residue on food and feed and is highly unlikely to increase exposure of humans to *Trichoderma harzianum* (T-22) fungi by dietary means.

3. *Drinking water*. *Trichoderma harzianum* strains are commonly found in water worldwide. Their presence in drinking water does not present a risk to animals or humans because the fungus is non-toxic and consumed in low concentrations. It is highly unlikely that use of strain T–22 as a pesticide will increase the concentration of this organism in the water supply beyond the already existing background levels of naturally occurring populations.

4. *Non-dietary exposure*. The only non-dietary exposure expected is to applicators. However, exposure to this organism resulting from its application according to label directions is not expected to present any risk of adverse health effects.

*D. Cumulative Effects*

Because this organism controls disease by mechanical, not chemical means, and the organism itself is non-toxic there will be no cumulative exposure created by other pesticides acting with the same mode of toxicity. In addition, no cumulative adverse health effects are expected from long-term exposure to this organism.

*E. Safty Determination*

1. *U.S. population*. Strain T–22 is a strain of naturally occurring non-toxic organism. Use of this organism as a pesticide product will result in little or no residues on food or feed. Since people are already exposed to this organism in nature, the incremental exposure from its use as a pesticide product is expected to be negligible.

2. *Infants and children*. Any differences in infants and children's dietary habits or exposure patterns to this organism do not correlate with an increased risk of harm to children. There is no information suggesting differential sensitivity of infants and children to this natural organism. Infants and children are currently exposed to this organism in the natural environment and no data suggest that the use of this organism as a pesticide will harm children.

*F. Internal Tolerances*

There are no international tolerances or tolerance exemptions for this biocontrol fungus.

**2. Makhteshim-Agan of North America Inc.**

*PP 7F4812*

EPA received a pesticide petition (PP 7F4812) from Makhteshim-Agan of North America Inc., 551 Fifth Avenue, Suite 1100, New York, NY 10176, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of the biofungicide Trichodex

(*Trichoderma harzianum* T-39) in or on all raw agricultural commodities.

*A. Proposed Use Practices*

*Recommended application method and rate(s), frequency of application, and timing of application.* Trichodex may be applied with conventional spray equipment for control of *Botrytis* (gray mold) on fruit and vegetable crops. The rate of application is two to four pounds of Trichodex per acre in sufficient gallonage to insure adequate coverage. The frequency and timing of application vary with the crop being treated. For example, one to four applications are made to wine grapes in a rotational program with conventional chemical fungicides, while four to six applications may be applied to wine grapes when the product is used alone. Table grapes are treated with one to three applications during pre-bloom to fruit set. Treatments on strawberry may include up to eight applications (once per week) throughout the growing season from pre-bloom to harvest.

*B. Product Identity/ Chemistry*

1. *Identity of the pesticide and corresponding residues.* The active ingredient is *Trichoderma harzianum* T–39, a fungus which occurs naturally in the environment worldwide, including in the U.S. The strain of *T. harzianum* used in Trichodex has been designated as ''T-39.'' This strain has been characterized by colony and structural morphology, RFLP mapping and classified by intraspecific DNA primers. The strain is typical of *T. harzianum* and does not express characteristics of plant pathogenic strains. The organism does not persist in the environment and relies on repeated application to achieve plant protection. The organism degrades in the environment to natural organic constituents.

2. *Magnitude of residue anticipated at the time of harvest and method used to determine the residue.* Makhteshim-Agan of North America has requested waivers for these data requirements. The waiver requests were based on the known low toxicity of Trichodex, the natural occurrence of *T. harzianum* T–39 in the environment, the non-toxic mode of action, the submitted data and information available in the open literature.

3. *Statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* Makhteshim-Agan of North America has not proposed an analytical method, because residues of *T. harzianum* T–39 resulting from Trichodex applications do not pose a hazard to humans, plants and animals. *T. harzianum* T–39 from naturally occurring strains is commonly found in the environment and can be reasonably expected to exist whether or not Trichodex has been applied to the growing crop.

*C. Mammalian Toxicological Profile*

Provide the following or rationale for waiver request.

1. *Acute toxicity.* The health effects data submitted in the Makhteshim-Agan of North America Inc. petition and all other relevant material have been fully evaluated by the EPA in their approval of an Experimental Use Permit for large scale field evaluation of Trichodex. The mammalian toxicological data considered in support of the exemption from the requirement of a tolerance for Trichodex include: an acute oral toxicity study in rats, a primary eye irritation study in rabbits and an acute inhalation study in rats. All three studies were assigned Toxicity Category III. The submitted acute dermal toxicity study in rabbits, primary dermal irritation study in rabbits, and a dermal sensitization study in guinea pigs were assigned Toxicity Category IV.

The results of these studies indicated that Trichodex has an acute oral $LD_{50}$ greater than 500 mg/kg body weight in rats, an acute dermal $LD_{50}$ greater than 1,150-1,570 mg/kg body weight in rabbits. Trichodex caused reversible eye irritation with complete clearance after 7 days. No dermal irritation in rabbits was observed, however, the product was found to be a delayed contact dermal sensitizer in guinea pigs (based on the modified Beuhler Assay). The acute pulmonary toxicity/ pathogenicity study in the rat showed no evidence of pathogenicity or Trichodex reproduction in the tissues examined. Although the study was of insufficient duration to achieve complete clearance in the lung, the study demonstrated clearance in brain, blood, lymph nodes, kidney, liver, spleen, and caecum. Toxicity Category III was assigned to pulmonary exposure mitigated by label instructions indicating personal protective equipment for applicators.

2. *Genotoxicity, reproductive and developmental toxicity, subchronic toxicity, and chronic toxicity.* The T-39 strain of *T. harzianum*, the active ingredient in Trichodex, does not produce fungal metabolites as its primary mode of action against target plant pathogens. Submitted studies using the Ames Test and Mouse Micronucleus test show no indication of genotoxic or reproductive effects.

*D. Aggregate Exposure*

1. *Dietary exposure*— a. *Food.* Trichodex is based on a naturally occurring organism normally found in the environment. For the purposes of assessing the potential dietary exposure under this exemption, it should be considered that *T. harzianum* may be present on all RACs. Submitted studies indicate that residues of Trichodex do not pose a hazard to humans by route of ingestion.

b. *Drinking water.* Based on the available studies presented for use in the assessment of environmental risk, it is not anticipated that drinking water will provide a route of exposure to residues of Trichodex. The anticipated use pattern for Trichodex does not include use in or on waterways. Even though Trichodex can be washed off treated plants by rain and during processing of crops by water, it degrades in an aqueous environment into organic constituents by normal biological, physical, and chemical processes.

c. *Non-dietary exposure.* Based on label directions for use as a foliar applied biofungicide. The only non-dietary exposure is to applicators of the product. However, exposure to Trichodex resulting from its proper application according to label directions for the use of personal protective equipment is not expected to present any risk of adverse health effects.

*E. Cumulative Exposure*

Other than a possible allergic reaction to spores present in the product following repeated exposure, no cumulative adverse health effects are expected from long-term exposure to Trichodex. Risk of dermal sensitization is addressed on the label which specifies proper personal protective equipment to minimize exposure.

*Exposure through other pesticides and substances with a common mode of toxicity with this pesticide.* Consideration of a common mechanism of toxicity is not appropriate for several reasons:

(1) Trichodex has a non-toxic mode of action.

(2) Only a small number of pesticidal products containing *T. harzianum* as an active ingredient are currently registered.

(3) The species is ubiquitous in nature.

(4) The active ingredient has been demonstrated to be non-toxic in submitted acute studies.

*F. Safety Determination*

1. *U.S. population in general.* Trichodex is based on a naturally

occurring organism normally found in the environment and on crop plants. The low toxicity of the subject active ingredients is demonstrated by the data summarized above. Based on this information, it has been determined that aggregate exposure to Trichodex over a lifetime will not pose appreciable risks to human health and there is a reasonable certainty that no harm will result from Trichodex residues. Since people are exposed to *T. harzianum* from natural sources, the incremental exposure from its use in pesticide products is expected to be negligible.

2. *Infants and children*. It has been determined that the toxicity and exposure data are sufficiently complete to adequately address the potential for additional sensitivity of infants and children to residues of Trichodex. It is concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to Trichodex residues.

*G. Existing Tolerances*

1. *Existing tolerances or tolerance exemptions*. A temporary tolerance exemption in conjunction with an Experimental Use Permit for Trichodex is currently in effect. EPA has also promulgated permanent exemptions from the requirement for a tolerance for strains of *T. harzianum* other than T-39.

2. *International tolerances or tolerance exemptions*. No maximum residue level has been established for Trichodex by the Codex Alimentarius Commission. Exemptions from the requirement of a tolerance have been granted for Trichodex in all international registrations.

[FR Doc. 97–22375 Filed 8–21–97; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPTS–00215; FRL–5724–5]**

## Printed Wiring Board Cleaner Technologies Substitutes Assessment, Making Holes Conductive; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Availability for Comment.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing the availability of the draft document entitled ''Printed Wiring Board Cleaner Technologies Substitutes Assessment: Making Holes Conductive.'' This document details the findings of EPA's Design for the Environment (DfE) Printed Wiring Board (PWB) Project regarding alternative technologies for performing the ''making holes conductive'' function during the manufacture of PWBs.

**DATES:** Comments are due no later than October 6, 1997.

**ADDRESSES:** Comments should be mailed in triplicate to: TSCA Public Docket, Rm. NEG 99, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460. Comments and data may also be submitted electronically by following the instructions under Unit II. No CBI should be submitted through e-mail. Comments are available for public inspection and copying in the TSCA Nonconfidential Information Center, Rm. NEB 607, 401 M St., SW., Washington, DC. Free copies of the complete 2-volume report (EPA 744–R–97–002 a and b) can be obtained by contacting the EPA's Pollution Prevention Information Clearinghouse (PPIC), at 401 M St., SW., (7407), Washington DC, 20460; 202–260–1023; fax 202–260–4659, or the report can be reviewed on the DfE home page at http://www.epa.gov/dfe.

**FOR FURTHER INFORMATION CONTACT:** Dipti Singh, Design for the Environment Program, Office of Pollution Prevention and Toxics (7406), U.S. EPA, 401 M St., SW., Washington, DC, 20460; 202–260–1678, e-mail: oppt.dfe@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Project Background

EPA's Design for the Environment (DfE) Program began working with the printed wiring board (PWB) industry in 1994, to identify and evaluate environmentally beneficial and cost effective alternatives to PWB manufacturing technologies. The DfE PWB Project is a voluntary, cooperative partnership between EPA, the PWB industry, public-interest groups, and other stakeholders. The goal of this Project is to provide information that will assist the PWB industry in making informed decisions when evaluating and implementing beneficial alternatives to PWB manufacturing technologies.

For purposes of this study, the project evaluated seven alternative technologies for performing the ''making holes conductive'' (MHC) function during the manufacture of PWBs. The non-conveyorized electroless copper process was considered the baseline process against which alternative technologies and equipment configurations were compared. With this notice, EPA is announcing the availability of the draft document entitled ''Printed Wiring Board Cleaner Technologies Substitutes Assessment: Making Holes Conductive.'' This document marks the culmination of over 2–years of research by the DfE PWB Project and the University of Tennessee Center for Clean Products and Clean Technologies. The data gathered on the comparative risk, performance, cost, and natural resource requirements of the alternatives and baseline technologies are presented in this document.

### II. Public Record

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPPTS–00215], and will include any comments and data submitted electronically. A public version of this record, including printed/paper versions of electronic comments, which does not include any information claimed as confidential business information CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding Federal legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–00215]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

Dated: August 12, 1997.

**Mary Ellen Weber,**

*Director, Economics, Exposure, and Technology Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 97–22376 Filed 8–21–97; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 2217]**

## Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

August 19, 1997.

Petitions for reconsideration have been filed in the Commission's rulemaking proceeding listed in this

Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800. Oppositions to this petition must be filed September 8, 1997. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

*Subject:* 800 Data Base Access Tariffs and the 800 Service Management System Tariff. (CC Docket No. 93–129).

Provision of 800 Service (CC Docket No. 86–10).

*Number of Petitions Filed:* 1.

*Subject:* Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange area. (CC Docket No. 96–14).

Policy and Rules Concerning the Interstate, Interexchange Market. (CC Docket No. 96–61).

*Number of Petitions Filed:* 6.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 97–22270 Filed 8–21–97; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, August 26, 1997, to consider the following matters:

*Summary Agenda:* No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Investment Policy for Liquidation Funds Managed by the FDIC.

Memorandum and resolution re: Part 369—Prohibition Against Use of Interstate Branches Primarily for Deposit Production.

**DISCUSSION AGENDA:** Memorandum and resolution re: Part 362—Activities and Investments of Insured State Banks.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Ms. Valerie J. Best, Assistant Executive Secretary of the Corporation, at (202) 898–3812.

Dated: August 19, 1997.

Federal Deposit Insurance Corporation

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 97–22472 Filed 8–20–97; 10:49 am]

BILLING CODE 6714–01–M

## FEDERAL MARITIME COMMISSION

### Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

EP International Shipping, 8336 Hindry Avenue, Los Angeles, CA 90045, Elliott C. Penalosa, Sole Proprietor.

Robert W. Cisco Custom House Broker, 416 Common Street, Suite 101, New Orleans, LA 70130, Robert W. Cisco, Sole Proprietor.

Dated: August 19, 1997.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 97–22309 Filed 8–21–97; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL MARITIME COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Federal Maritime Commission.

**TIME AND DATE:** 10:00 a.m.—August 27, 1997.

**PLACE:** 800 North Capitol Street, N.W., Room 905, Washington, D.C.

**STATUS:** Closed.

**MATTER(S) TO BE CONSIDERED:**

1. Docket No. 96–20—Port Restrictions and Requirements in the United States/Japan Trade
2. Panama Port Privatization Issues
3. Docket No. 94–01—Ceres Marine Terminal, Inc. v. Maryland Port Administration—Consideration of the Record.

**CONTACT PERSON FOR MORE INFORMATION:** Joseph C. Polking, Secretary, (202) 523–5725.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 97–22557 Filed 8–20–97; 2:52 pm]

BILLING CODE 6730–01–M

## FEDERAL MARITIME COMMISSION

### Notice of Intent To Cancel Tariffs of Common Carriers by Water and To Suspend Licenses of Ocean Freight Forwarders in the Foreign Commerce of the United States for Failure To File Anti-Rebate Certifications

The Federal Maritime Commission's regulations at 46 CFR 582.1(a), 582.3(a) and 582.3(b) require every common carrier by water and ocean freight forwarder in the foreign commerce of the United States to file an anti-rebate certification by December 31 of each even-numbered calendar year.

Notice is given that the common carriers by water shown in part A of the attached list have not filed the anti-rebate certification which was due on or before December 31, 1996. Consequently, these firms were notified by certified mail dated and mailed on August 1, 1997, that, if within 45 days of the date of such notice, they have not either filed an anti-rebate certification or established that it has been filed, their tariffs would be cancelled in accordance with 46 CFR 514.1(c)(1)(iii)(C).

Notice is further given that the ocean freight forwarders shown in part B of the attached list have not filed the anti-rebate certification which was due on or before December 31, 1996. Consequently, these firms were notified by certified mail dated and mailed on August 1, 1997, that, if within 45 days of the date of such notice, they have not either filed an anti-rebate certification or established that it has been filed, their licenses would be suspended in accordance with 46 CFR 510.16(a)(6). This suspension shall remain in effect until such time as the license is reinstated by the Commission after an anti-rebate certification is filed.

Notice is further given that those firms that are both common carriers by water and ocean freight forwarders shown in part C of the attached list have not filed the anti-rebate certification which was due on or before December 31, 1996. Consequently, these firms were notified by certified mail dated and mailed on August 1, 1997, that, if within 45 days of the date of such notice, they have not either filed an anti-rebate certification or established that it had been filed, their tariffs would be cancelled in accordance with 46 CFR 514.1(c)(1)(iii)(C) and their licenses would be suspended in accordance with 46 CFR 510.16(a)(6). This suspension shall remain in effect until such time as the license is reinstated by the Commission after an anti-rebate certification is filed.

Firms filing the anti-rebate certification during the 45-day notice period will not have their tariffs cancelled or licenses suspended, but may be subject to a civil penalty of up to $5,500 for each day the firm is in violation.

**Bryant L. VanBrakle,**

*Director, Bureau of Tariffs, Certification, and Licensing.*

## Appendix A

Org. No. and Name

012259 A.L.S. Associazione Logistica Spedizionieri S.R.L.
013867 A.L.S. International Transportation (U.S.A.) Inc.
013287 A.R.T. Ocean Navigation Shipping Line Limited
010653 Abacus Transports & Forwarder Ltd.
012035 Abba Shipping Lines, Inc.
000155 ABC Containerline N.V.
012754 Abco International Freight (H.K.) Ltd.
013182 Acap, Consolacion P.
011106 ACB Ocean Line, Inc.
002158 Ace Shipping Corp.
008667 Aempac System, Inc.
012296 Agriculture Investment Export, Inc.
011312 Agrolat, Inc.
010398 Albini & Pitigliani Spa
012297 Alpha International Cargo Services, L.P.
012523 AMCO Shipping International Limited
012290 American Business Lines Inc.
012730 American Lines, Inc.
012847 American Ship Management, Inc.
008795 Amzone International, Inc.
009482 ANR Inc.
014362 AP Transport Services, Inc.
011331 Arawak Bahamas Ltd.
010800 Arawak Caribbean Line, Ltd.
013672 Asia Star Forwarders Co., Ltd.
007664 Atlantic Transport Co. Ltd.
012741 Aurora Express International Inc.
010650 Aust-Asia Worldwide Shipping Pty, Ltd.
013180 B.R. Seaxpress Ltd.
000330 Babuyan Carriers S.A.
013378 Bahamas Provider Line Ltd.
014336 Baltazar, Harry O.
011633 Baltic Shipping Co. (U.S.A.), Inc.
014353 Benchmark Transportation Services, Inc.
013151 Benemerito, Lisenio R.
006672 Bermuda Export Sea Transfer Ltd.
011956 Best Container Line Ltd.
013454 Best Shipping Inc.
013177 Biscayne Shipping S.A., Inc.
008366 Black Sea Shipping Company
013838 Black Sea Transport Ltd.
009796 BLN Express Company
014204 Borsan Agencies Inc.
012074 Breakthrough International Co., Inc.
009341 Bridgeport Shipping Lines, Inc.
008135 C&F Worldwide Agency Corp.
012094 C.B. Marine & Engineering Pty. Ltd.
013155 Calberson Overseas SA
011223 Capital Distribution Services Ltd.
012836 Cargo Co-Ordinators Shipping (H.K.) Ltd.
011359 Cargo Link Services Limited
011620 Cargo Systems Worldwide, Inc.
010672 Cargo Transport Inc.
012809 Cargomax International Inc.
007486 Carib-Ocean Shipping, Inc.
013360 Caribbean Transport Line S.A.
012194 Caspian Shipping Company
012482 Cast Logistics (U.S.A.) Limited
012581 Catcor Services, Inc.
012551 CCCA/FNC
011982 CGM Tour Du Monde
008681 Chemical Leaman Tank Lines, Inc.
013211 China Eastern Express (H.K.) Ltd.
000747 China National Foreign Trade Transportation Corp.
000749 China Navigation Co. Ltd., The
008752 China Trading Service Co. Ltd.
011603 Choi, Michael
007956 Chu Kong Shipping Co., Ltd.
011725 City Network. Inc.
013594 Columbia Coastal Transport, Incorporated
011723 Columbia Shipping, Inc. (Houston)
007827 Combitainer Ltd.
010199 Combuilt Services International Ltd.
013527 Comet Lines Agency, Inc.
011948 Comet Technology Corp.
013208 Commnet Transportation, Inc.
000784 Compagnie Maritime D'Affretement
012840 Compania Argentina De Navegacion Interoceanica S.A.
000888 Compania Trasatlantica Espanola, S.A.
009410 Connections International
010360 Conterm AB
012817 Conterm Freight (F.E.) Pte Ltd
013110 Conterm Freight (Thailand) Co., Ltd.
007318 Continental Seacorp Shipping, Ltd.
011369 Cruz, Adalberto Jesus
011017 Cuban Caribbean Shipping, Inc.
012597 Daily Smart Shipping Co., Ltd.
012914 Dartrans Limited
014180 DEF Limited
014121 Deniz Nakliyati T.A.S.
013804 Deugro Ocean Transport, Inc.
009677 Deutsche Nah-Ost Linien GMBH & Co. KG.
012394 DFDS Transport, Inc.
013784 Dollar America Exchange, Inc.
013890 Dolphin Int'l Transportation Co., Ltd.
006900 Duchess Shipping, Inc.
013009 Dutch Air B.V.
013548 Dynasty Customs Broker. Inc.
013328 E.S.L. Express, Inc.
012055 Eastern-Trans (U.S.A.), Inc.
013470 EES Shipping (NSW) Pty. Ltd.
014306 EFES Cargo U.S.A., Inc.
014481 Embona U.S.A.
005698 Empresa Lineas Maritimas Argentinas S.A.
013753 Esmeralda Shipping Company
014358 Espiritu, Eugenio S.
012383 Eternal Chain Shipping Enterprises Limited
009318 Eurasia Express (HK) Co., Ltd.
009316 Eurasia Express Co., Ltd.
010742 European Shipping Transport (E.S.T.) B.V.
013043 Everich Shipping Ltd.
012110 Executive Freight Consolidators, Inc.
014169 Expedited Transportation Services, Inc.
012450 Express International Forwarding
013358 Express Shipping Lines, Inc.
009876 Fiorino Shipping S.R.L.
010825 Fly Dragon Shipping Ltd.
010804 Foong Sun Shipping (PTE) Ltd.
012196 Frontier Container Line, Inc.
010450 Galaxy Freight Service Ltd.
007984 General Ocean Freight Container Line
007529 Genesis Container Line, Ltd.
013396 Global Forwarding Ltd.
013005 Global-Link Resources, Inc.
012334 GLSL Shipping & Chartering GMBH
005879 Gobnait Container Line
000445 Golden Gate Container Line, Inc.
006783 Great Abaco Shipping Co., Ltd.
013214 Great Way Trading & Transportation, Inc.
012443 Greensky Shipping Ltd.
012528 Griffiths Line, Inc.
008016 Guardship America, Inc.
013852 Gulf & Orient Steamship Co.
010633 Hanshin Air Cargo USA Inc.
012293 Hawthorne, Dennis
010218 HC Hansa Cargo Transport GMBH
008783 Helka Express International Ltd.
002222 Hercules Packing, Shipping & Moving Co. Inc.
010968 Hero Shipping Co., Ltd.
010414 Hill & Delamain Group Ltd.
013855 Houng, Tina
007837 Hub City Los Angeles Terminals, Inc.
012522 Hudson Int'l Transport (Taiwan) Corp.
010362 Ideal Consolidators Ltd.
013244 Independent Marine Consultants Inc.
011047 Innovative Logistics Incorporated
014114 Inter-Jet Ocean Transport, Inc.
013121 Inter-Maritime Container Lines Inc. (IMCL)
008625 Interglobal Shipping Company Limited
013046 Intergroup Shipping (Asia) Ltd.
011950 Intermodal Logistics Systems, Inc.
013168 International Express Consolidators Co.
013101 International Moving Service, Ltd.
013976 International Ocean-Air Services, Inc.
005934 Interoceanica Ltda.
012006 Intertraffic-TFI Pty. Ltd.
012331 Intrans Consolidators, Inc.

013120 Intransit Services Inc.
010834 Isla Dominicana De Petroleos Corporation
011951 Island Cargo Consolidators Inc.
011274 Island Shipping and Trading, Ltd.
013908 Italcal Group, Inc.
013088 Jefferson Shipping Ltd.
009776 Jewett-Cameron Lumber Corporation
010878 Jiang Tong Company Limited
014322 Johnson Storage & Moving Co.
013246 Joint Cargo Movements, Inc.
007132 Joklar Ltd.
010550 Jumbo Protectors Ltd.
013441 K&M Shipping, Inc.
006938 Kaitone Shipping Co., Ltd.
006585 Kam International Line
012635 KCTC International Ltd.
011670 Keentrans Shipping Company
007592 Kirk Freight Line Ltd.
008054 Kirk Line, Ltd.
011792 Ko, Young Hee
012999 Kollyns International Co., Ltd.
011226 Koninklijke Frans Maas Groep N.V.
010192 Kunyoung Shipping Co., Ltd.
007045 Laparkan Trading Limited
013382 Larimar Shipping, Inc.
010674 Laser Lines Ltd. AB
012876 Latino S.A.
013910 Lead Young Sea & Air Freight Co., Limited
013376 Leo Transport Corporation Ltd.
012020 Lockson Services Limited
009340 Logistics Service (HK) Co., Ltd.
011037 Long Transportation Services, Inc.
010420 M&M Militzer & Munch GMBH Internationale Spedition
009840 MAC–NELS Agencies PTE Ltd
010361 Mapcargo International
013544 Marine Logistics, Inc.
012859 Maritima De Quintana Roo, S.A. De C.V.
012129 Med-Pacific Express
009916 Mercury Ocean Freight Forwarder Co., Ltd.
008617 Meridian Shipping Line, Inc.
010395 Metzger Und Richner Transport AG
012060 Mexican Gulf Line
012821 Mexus RO/RO Line, Inc.
009839 Montemar S.A.
010515 Multicargo S.R.L.
011326 Multimodal Services (NY) Inc.
014342 Mundo Shipping Corp.
013687 Myung Ma Trans Co., Ltd.
001818 National Shipping Corporation of the Philippines
001511 Naviera Consolidada S.A.
011235 Navieros Interamericanos, S.A.
011046 Navimar Lines, C.A.
012233 New Bight Enterprise Limited
010584 New Zealand Van Lines Ltd.
008125 Nihon Unyu Kaisha, Ltd.
009792 Novocargo USA, Inc.
012757 Ocean Conco Line, Inc.
013132 Ocean Eagle Container Line Inc.
013134 Ocean General Inc.
011192 Oceanic Lloyd Limited
010713 Oceantower Forwarder Service Inc.
009620 Omega & Associates, Inc.
012513 Orion Maritime Ltd.
012399 Otim-Organizzazione Trasporti Internazionali E Marittimi S.P.A.
011284 P&L Shipping Ltd.
013556 P.I. Express, Inc.
013506 Pacific Direct Line Ltd.
013062 Pacific Freight Services Limited
013559 Packer, Matt
011029 Pagoda Container Line Corp.
013690 Park, Insoo
009949 Pasha Terminal Company, Inc.
012046 Pearl Delta Shipping Co., Ltd.
013767 Petcon Container Lines Ltd.
013949 Phoenix Caribbean Shipping Line
013831 Pilot Air Freight Corp.
012106 Pinoy Cargo Freight Forwarders, Inc.
011090 Polar Steamship and Commerce Company Inc.
012641 Portserv Limited
012637 Prime Trade & Transportation Limited
013522 Pro-Well Sea Consolidators & Forwarding Ltd.
013015 Professional Cargo Services Int'l Inc.
013090 Project Asia Steamship Limited
013589 Promate Freight Service, Inc.
013565 Quality Logistics, Inc.
013903 Quantum International Forwarding Ltd.
002503 R.A. Leslie & Company, Inc.
000858 Randy Express, Inc.
011683 Rapid Transport Ltd.
011318 Red Oak Industries, Inc.
006214 Rokuchu Marine Corporation
013590 Rola Shipping Company Limited
010187 Royal Cargo Corporation
014108 Royal Marine Shipping, Inc.
013264 Saco Shipping GMBH
010545 Safco International Freight Corp.
010477 Saga Transport (HK) Ltd.
009932 Sagawa World Express, Inc.
007950 Samonte, Ramon A.
010732 Samson Transport Company (UK) Ltd.
013604 Sanchez, Carlos B.
011626 Savannah Sound Maritime Company Limited
009688 SBA Consolidators, Inc.
001083 Scanfreight Continental N.V.
013241 Schwaben Express, Inc.
012577 SCN Container Line, Inc.
014063 Sea & Air Transport, Inc.
012737 Sea Road Shipping, S.A.
008300 Sea-Span Shipping, Ltd.
011981 Seatop Shipping Ltd.
011015 SEC Line Ltd.
008237 Sekin Transport International Ltd.
010921 Senko Co., Ltd.
001133 Sesko Marine Trailers, Inc.
007364 Shu, Frank Tao-Ching
012602 Shui Nam Navigation (H.K.) Ltd.
013102 Siam Paetra International Co., Ltd.
012256 Single Source Transportation, Inc.
012031 Sino-Place Limited (California)
012011 Sofrana Holding Limited
013235 Southeastern Shipping Lines, Ltd.
012566 Sovereign Container Lines Limited
012969 Special Commodities Services, L.L.C.
010474 Stallion Cargo Inc.
014226 Stallion Freight U.S.A. LLC
012462 Star Trans-Pacific International Forwarding Co. Ltd.
010387 Sungwoo Shipping Co., Ltd.
011961 Sunlex Shipping Limited
001203 Sunmar Shipping, Inc.
014010 Sunny Island Freight Services Inc.
013929 Sunrise American Shipping, Corp.
013646 Super Bridge Shipping Limited
014020 Tan, Gary Yenkok
012689 TCA SRL
011704 Tellux Shipping Ltd.
008426 Textiles Trans International Ltd.
013807 Titan Carriers Limited
011196 Top Harbour Shipping Ltd.
013755 Totalmar Transporte C.A.
000545 Trade Ocean Line, Ltd.
012588 Trans Arabian Shipping Co. Inc.
008414 Trans Power International Forwarder Corp.
012276 Trans-Freight Inc.
011628 Transbridge International, Inc.
013716 Transeurochart Company Ltd.
012307 Translink Shipping Ltd.
010857 Transnation Freight Services, Inc,
014363 Transport & Freight Forwarding International Co., Ltd.
013573 Transporte Dos Rios De Navegacion, C.A.
013174 Transway International Co., Ltd.
002768 Transworld Lines, Inc.
014392 Transworld Shipping Ltd.
012843 Treasure Coast Transport Company, Inc.
013653 Trenton Container Line Ltd.
013841 Trimex International Ltd.
011715 Tropical Freight Consolidators, Inc.
010397 Trust Forwarder & Consolidator, Inc.
011382 Trutainer N.V.
007474 U.S.A. Tecmarine, Inc.
014286 Unimar Maritime Limited
014416 Union International America, Inc.
013052 Unishipping
008833 United Abaco Shipping Company Limited
007836 United American Consolidators Corp.
014083 United States Ukraine Shipping, Inc.
012895 United Trans-Trade Inc.
000073 Universal Alco Ltd.
014139 Universal Logistic Forwarding Co., Ltd.
014424 Universal Transports Ltd.
013309 V N Cargo, Inc.
011317 Vane Sail Shipping Company Ltd.
012424 Venconav USA Ltd.
011366 Venexpress Lines, Inc.
013789 Venezuela, Republica De—Ministerio De La Defensa—Armada
012357 Venture Shipping Inc.
013930 Victoria Line, Inc.
012138 Vietnam Sea Transport and Chartering Company
011152 Vin-Shinyei (China) Limited
011161 Votainer Far East BV
013148 Wan Hai Lines Ltd.
009330 Welgrow International, Inc.
013613 Wilson Freight (Far East) Limited
014119 Winfield Shipping Inc.
013229 Winfull Transportation Co., Ltd.
008229 Winsor Grain, Inc.
012232 Woodlines Shipping Limited
011614 World-Track Pacific Lines Ltd.
013954 Worldway Shipping Inc.
009601 Worldwide Exhibition Services, Inc.
013496 Worldwide Freight Systems, Inc.
013487 Wright Kerr Tyson Limited
009339 Yamato Transport (HK) Ltd.
013822 Yamato Transport (S) PTE Ltd.
009346 YK Shipping International (USA), Inc.
009889 Youngs Consolidators Ltd.
011963 Zhu Sheng Transportation (HK) Co Ltd.
009709 Zonn Agency

## Appendix B

Org. No. and Name

006419 AAA Forwarding Company
006882 A.H. Carter & Associates, Inc.
004328 A.R. Savage & Son, Inc.
005268 AAA Freight Forwarding Company, Inc.
005629 ABB Intertrade, Inc.
006565 ABC Freight Forwarders, Inc.
013885 Able Freight Services, Inc.
006438 Accord Shipping Co., Inc.
012161 Aero Expedited, Inc.
014251 Air & Ocean International, Inc.
004758 Air-Mar Shipping, Inc.
012283 Air-Sea International, Inc.
004901 Air/Sea Forwarding Specialist, Inc.
011458 Airconex, Inc.
014510 Akemi & Co., Inc.
012917 Alcala, Lucia
013901 All American Worldwide, Inc.
011489 All-Ways Cargo Services, Inc.
012803 Alliance Brokers International, Inc.
012507 Allyn International Services, Inc.
009922 Almcorp Project Transport, Inc.
004180 Alonso Shipping Company
013900 Amerford FMS, Inc.
014015 America Worldwide Inc.
013847 American International Brokerage, Inc.
011604 American One Freight Forwarders, Inc.
005617 American Packing & Shipping, Inc.
013341 American President Business Logistics Services, Ltd.
004894 Arabian National Shipping Corp.
004252 Araujo, Ramon
012163 Armstrong Transfer & Storage Company, Inc., Atlanta, Georgia
014211 Arriaga & Associates, Inc.
007546 Artpak Transport Ltd.
009538 Associated Customhouse Brokers, Inc.
007353 Associated International Consultants, Inc.
008033 Atlantic International Freight Forwarders, Inc.
014347 Atlantic Pacific International, Inc.
011588 Aviation Import/Export Incorporated
012180 Axo Industries, Inc.
010791 B&A Brokers, Inc.
013116 Bahl, Vandana C.
013859 Baltrans USA, Inc.
004852 Banis, Chris T.
004249 Barian Shipping Company, Inc.
014100 Barnett Trading, Inc.
014388 Bauhinia International Corp.
006396 BEN–G Incorporated
004360 Bill Polkinhorn, Inc.
005367 Blackstar Transport Services, Inc.—Acts
013747 Blair, Elaine
012159 Blue Star Shipping Corp.
004874 BWI Corporation
006893 Calabro, Francis J.
012753 Calberson, Inc.
011176 Caliber Customs Brokers and Freight Forwarders, Inc.
007467 Camelot Company, The
004750 Cancetty, Fernando L.
013436 Caraval, Inc.
007462 Cargo Import Brokers, Inc.
014463 Cargo Maritime Services, Inc.
012626 Caribbean Freight Forwarders, Inc.
009555 Caribe Express, Inc.
013846 Caribwrap Inc.
011507 Carinter Miami, Inc.
004474 Carl Matusek, Inc.
005647 CDM Transportation Services, Inc.
005409 Celaya-Guerin International, Inc.
009495 Chang, Kil Moon
004773 Chipman Corporation
009750 Chun, Song Nam
014105 CJC International Services Inc.
006487 Cole Forwarding, Inc.
011158 Columbia Shipping Inc. (SFO)
005535 Combined Transport Systems, Inc.
009356 Compass Marine Services (U.S.A), Inc.
013022 Consolidated Incorporated of Orlando
004536 Constable & Madison Inc.
014223 Continental Express International, Inc.
009556 Contrak Forwarding Company
004561 Corrigan Moving and Storage Co.
013350 D. Lee Krause & Company, Ltd.
012783 Da-Ma's Forwarding, Inc.
011002 Demetrios Air Freight Co., Inc.
004729 Demopoulos, Seraphim Steven
004931 Dependable Freight Forwarding, Inc.
014403 Deugro Projects USA, LLC
014279 Diaz, Jose Gregorio
004674 Diaz, Richard
013674 Dimerc USA, Inc.
005338 Dimerco Express (USA) Corp.
005379 Din, Akhtar L. Kim
007962 Dolphin Brokerage International Inc.
004764 Dulles International Customhouse Brokerage Corp.
004660 E.C. McAfee Co. Customhouse Brokers
013135 E.R.A. Freight Forwarding Inc.
004763 Eagle International, Ltd.
010924 Echlin Sales Company, The
005471 Edward J. Zarach & Associates, Inc.
014117 EMC Shipping, Inc.
004782 Erting, Jorgen A.
013808 ETA Import & Export Ltd.
007361 Express Packing & Forwarding, Inc.
013001 F.P. International Corporation
007086 Fairway Express, Inc.
005060 Fast Air Sea Transport, Inc.
008607 Fast Cargo U.S., (L.A.), Inc.
014229 Fast Transportation Services, Inc.
004512 Federal Warehouse Company
005657 Florida Overseas Services, Inc.
011469 Frama Forwarding Corp.
009928 Freight Forwarders Inc.
010937 Frontier International Shipping Company, Inc.
004618 Gatell International, Inc.
004446 Gateway Agency, Inc.
006441 General Brokerage Services Inc.
006443 General Express Management Corp.
004321 General Shipping Co. Inc.
004661 Glen Ellyn Storage Corporation
011684 Global International Forwarders, Inc.
012543 Graebel Houston Movers, Inc.
013826 GSG Investment Inc.
004078 Haras and Co., Inc.
006473 Hernandez, Jorge M.
004230 Hirshbach & Smith, Inc.
008791 Hol-Mar International, Inc.
013582 Huo, Shu-Liang
005504 Hydra Management, Inc.
011463 I.C.C. Products Inc.
005300 Import Brokers, Inc.
011115 Intercontinental Cargo Express, Ltd.
0012801 International Express Cargo Services, Inc.
014016 International Logistics, Inc.
004120 Intlcobal Inc.
010682 Ireland, David L.
004426 J.D. Smith Co., Inc.
004364 J.R. Michels, Inc.
004755 J.T. Scura, Incorporated
006466 Jackie International Corp
005460 Janel Group of Los Angeles, Inc., The
013333 Jaro International L.L.C.
005560 Johnson, Jean H.
004680 Jones, Richard L.
004872 Jorge Blanch, Inc.
004212 Joseph C. Murray & Co., Inc.
014130 K-Pasa, Inc.
013745 Kahng, Heywal Soo
006477 Kelly Intl. Forwarding Co., Inc.
005464 Kim, Young S.
011677 KNL International, Inc.
013794 Koberg, Manfred J.
013881 Koerber, Wesley S.
005039 La-Rama Shipping Company, Inc.
004912 Levine, Michael
006633 Loor International Forwarders, Inc.
004562 M & H Brokerage, Inc.
002550 M.A.T. International Shipping, Inc.
004917 Mahoney, John F.
004116 Manriquez, Honorato and Manriquez, Rachelle
005305 Marshall, Robert Gage
005528 Martinez, Miriam
013085 Maverick Distribution Services Inc.
007003 Mazzarella, Al
004124 McCarty, John T.
011005 Medina-Luque, Carlos G.
013617 Megatrans International Inc.
013984 Meler, Fleura
006489 Meteor Air Freight Inc.
004685 Metro Worldwide Shipping Inc.
004421 Middleton Group, Inc.
013066 Mina-Saito, Josephine D.
004796 Monti Forwarding Corp.
004713 Montiel, Omar
012788 Moon, Myung Ku
005558 Morgan Systems International, Inc.
011010 Munoz, Margaret V.
014252 Murphy Shipping & Commercial Services, Inc.
011112 Network Trading, Corp.
014240 NB Enterprises, Inc.
012875 Nimoli, Anthony
011114 Nippon Express Hawaii, Inc.
013473 Nishida, Guy Timothy
011481 Oceanic Freights, Inc.
012158 Oceanwide Shipping Inc.
013974 Overseas Mahanm Inc.
006435 Parkerco, Inc.
013086 Partec Forwarding Corporation
005606 Pegasus (N.Y.) Inc.
009527 Penbroke Marine Services, Inc.
013888 Perform' Air International Inc.
004939 Perryman, Mojonier Company
004505 Phyl Thomas & Son International Co.
005021 Pike Shipping Company, Inc.
013166 Pioneer General, Inc.
005503 PLI, Inc.
004801 Posey International, Inc.
011596 Princess Forwarding, Inc.
013536 Procargo Inc.
005372 Projects Transportation International, Ltd.
013721 Quartet International

014085 Quick Cargo Services Corp.
013362 R&F Rolap Enterprises, Inc.
005436 R.E. Delgado, Inc.
005294 Ram's Cargo Brokers, Inc.
002520 Rank International Forwarding, Inc.
014360 Reliable Van & Storage Co., Inc.
012923 Respond Cargo Services Corporation
004131 Richard Murray & Company
006476 Riggs, Kathleen Tansey
004786 Ripple, Harvey E.
011003 Robert J. Semany & Co.
004752 Robertson Forwarding Co., Inc.
006509 Rock-It Cargo USA Inc.
014218 Rodi Internationsl Corp.
004969 Rome International Freight Consultants, Inc.
005246 Ross Freight Company, Inc.
013793 RSB Logistic Services Inc.
006467 Rutherford International Group Ltd.
014146 SOS Global Express, Inc.
006018 S.T.S. International Inc.
004437 Sack and Menendez, Inc.
011547 Safe Ocean Forwarders, Inc.
004111 Salben Shipping Company, Inc.
009347 Sam Young Transportation, Inc.
007000 San Diego, Danilo P.
006515 Satcorp Shipping Inc.
014541 Satt International Forwarding Inc.
005125 Saudinvest Transportation & Traffic Services
004578 Schick Moving & Storage Company
005645 Schneider, Richard
013499 SCR International Freight Forwarding, Inc.
006517 Sea to Sea Foreign Freight Forwarder Inc.
010860 Seair Export Import Services, Inc.
013872 Seiwa America, Inc.
004878 Sequoia Forwarders Co.
006645 Servco California, Inc.
011135 Shannon International, Inc.
004687 Shenk, David W.
013175 Shippers, Inc.
013635 Siemens, III, William J.
012808 Simmons International Express, Inc.
014004 Simpson, Duane D.
009494 Smith, Virginia A.
013281 Solano, Paula
006522 Solmar Logistics Inc.
004953 Soto, Alfonso X.
004323 Southern Steamship Agency, Inc.
013137 Southern World International, Inc.
013583 Spencer, Eldon D.
010931 Stalco Forwarding Services, Inc.
004375 Stevens Shipping & Terminal Company
006525 Stewart Corporation
011185 Sunshine Freight Forwarders, Inc.
011517 Super Cargo International Services, Inc.
013557 Superior Shipping, Inc.
004253 T.A. Coleman & Co., Inc.
013627 Tampa Bay Ocean Services, Inc.
014213 Terrace Express, Inc.
013661 Thienvanich, Lersvidhya
004347 Thomas E. Flynn and Co.
012789 Thomas Griffin International, Inc.
013320 Thor Air Freight Corp.
013393 Time Definite Services, Inc.
013423 Todd, Richard
006867 Total Ex-Port of Florida, Inc.
004016 Total Ex-Port, Inc.
005398 Trade Winds Forwarding, Inc.
007388 Trans Continental Cargo, Inc.
013195 Trans-Global Expeditors Forwarding, Inc.
009963 Trans-Hemisphere Shipping Services, Corporation
011001 Transpo Service, Ltd.
012149 Trapaga-Torres, Gloria Veronica
013115 Treset Corporation
012909 U.S. Cargo, Inc.
014281 U.S. International Forwarding Agency, Inc.
004930 U.S.A. Shipping Corporation
012781 United States Auto & Cargo Exporters Corp.
005452 Uryu, Takashi
006539 Valencia Shipping Agencies Inc.
012440 Van Esch Trading and Shipping B.V.
011585 Vialoma Trading Corp.
005341 Viking Sea Freight Inc.
011453 VIL International, Inc.
013880 VIP Transport, Inc.
013968 Voit, Timothy Allan
006178 Wada, Hiroyuki
012177 Weimer, Alex G.
011007 Welgrow Ocean Transportation, Inc.
004106 Westfeldt Brothers Forwarders, Inc.
004888 Westwind Overseas Limited
009362 Wisco International Forwarders, Inc.
005505 Withers Transfer & Storage of Coral Gables Inc.
013129 World Cargo Corporation
004544 World Freight Forwarders, Inc.
012899 Wren, Lori Ann

## Appendix C

Org. No. and Name

013924 Ace Forwarding, Inc.
000685 Cargo Forwarding Inc.
012179 Goldmar Cargo, Inc.
011316 KC International Inc.
001585 La Flor De Mayo Express, Inc.
006730 Rhein Express International Ltd.
008933 Seaway International, Inc.
006552 Yowell Transportation Services, Inc.

[FR Doc. 97–22310 Filed 8–21–97; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. 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 September 11, 1997.

**A. Federal Reserve Bank of Minneapolis** (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

*1. Robert L. Frei,* Wagner, South Dakota; to acquire an additional 36.3 percent of the voting shares of Commercial Holding Company, Wagner, South Dakota, for a total of 53.3 percent, and thereby indirectly acquire Commercial State Bank of Wagner, Wagner, South Dakota.

Board of Governors of the Federal Reserve System, August 18, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–22301 Filed 8–21–97; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 15, 1997.

**A. Federal Reserve Bank of Boston** (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

*1. UST Corp.*, Boston, Massachusetts; to acquire Firestone Financial Corp., Newton, Massachusetts, and thereby engage in installment loan and lease financing activities to commercial

customers pursuant to §§ 225.28(b)(1) and (b)(3) of the Board's Regulation Y.

**B. Federal Reserve Bank of Atlanta** (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

*1. Regions Financial Corporation,* Birmingham, Alabama; to acquire Griffin Federal Savings Bank, Griffin, Georgia, and thereby engage in operating a savings association pursuant to § 225.28(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 18, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–22303 Filed 8–21–97; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. 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 September 15, 1997.

**A. Federal Reserve Bank of Minneapolis** (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

*1. Union Bancshares, Inc.,* Fargo, North Dakota; to become a bank holding company by acquiring 84.56 percent of the voting shares of Union State Bank of Fargo, Fargo, North Dakota.

Board of Governors of the Federal Reserve System, August 18, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–22302 Filed 8–21–97; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

*Name:* Employee Thrift Advisory Council.
*Time:* 10:00 a.m.
*Date:* September 16, 1997.
*Place:* 4th Floor, Conference Room, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, D.C.
*Status:* Open.
*Matters to be Considered:*

1. Approve minutes of the October 29, 1996, meeting.
2. Report of the Executive Director on Thrift Savings Plan status.
3. May 15–July 31, 1997, Thrift Savings Plan Open Season.
4. Legislation.
5. New Business.

Any interested person may attend, appear before, or file statements with the Council. For further information contact John J. O'Meara, Committee Management Officer, on (202) 942–1660.

Dated: August 19, 1997.

**Roger W. Mehle,**

*Executive Director, Federal Retirement Thrift Investment Board.*

[FR Doc. 97–22381 Filed 8–21–97; 8:45 am]

BILLING CODE 6760–01–M

## FEDERAL TRADE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 62 F.R., Monday, July 21, 1997, Page No. 38996.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 2:00 p.m., Thursday, August 14, 1997.

**CHANGES IN THE AGENDA:** The Federal Trade Commission has changed the date of its previously announced Oral Argument Meeting to September 3, 1997, 2:00 p.m.

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 97–22477 Filed 8–20–97; 10:54 am]

BILLING CODE 6750–01–M

## FEDERAL TRADE COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Federal Trade Commission.

**TIME AND DATE:** 10:00 a.m., Thursday, September 4, 1997.

**PLACE:** Federal Trade Commission Building, Room 532, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

**STATUS:** Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** Portions Open to Public:

(1) Oral Argument in Brake Guard Products, Inc., Docket 9277

Portions Closed to the Public:

(2) Executive Session to follow Oral Argument in Brake Guard Products, Inc., Docket 9277

**CONTACT PERSON FOR MORE INFORMATION:** Victoria Streitfeld, Office of Public Affairs: (202) 326–2180; Recorded Message: (202) 326–2711.

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 97–22478 Filed 8–20–97; 10:59 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Stake Holder Informational Meeting; Mortality Study

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) and the National Cancer Institute (NCI) of the National Institutes of Health announce the following meeting.

*Name:* Stakeholder informational meeting on the joint NIOSH/NCI study, ''A Cohort Mortality Study with a Nested Case-Control Study of Lung Cancer and Diesel Exhaust among Non-metal Miners.''

*Time And Date:* 9 a.m.–12 noon, September 24, 1997.

*Location:* Ground Floor Auditorium, Hubert Humphrey Building, 200 Independence Avenue, SW, Washington, D.C. 20201.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

*Purpose:* To provide an overview of the implementation of the mortality study, and to exchange information among government, stakeholders, and interested parties on procedural and related aspects of the study.

*Matters To Be Discussed:* The agenda will include information on the NIOSH/NCI research plan; request for information on industrial hygiene sample measurements or other data, or possible sources of such data that could add to the study validity; request for information on types and usage of diesel engines and fuel of relevance to exposure estimation; plan for data sharing and announcement of future informational meetings. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited. Written comments will also be considered.

*Contact Person For Additional Information:* Michael Attfield, Ph.D., NIOSH Project Director, Division of Respiratory Disease Studies, NIOSH, CDC, M/S 234, 1095 Willowdale Road, Morgantown, West Virginia 26505–2888, telephone 304/285–5737, E-mail mda1@cdc.gov.

Individuals wishing to make an oral statement should contact Dr. Attfield so that time can be allocated.

Dated: August 19, 1997.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 97–22469 Filed 8–21–97; 8:45 am]

BILLING CODE 4160–19–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### National Vaccine Advisory Committee

National Vaccine Advisory Committee (NVAC), Subcommittee on Vaccine Safety, Subcommittee on Immunization Coverage, Subcommittee on Future Vaccines, and the Advisory Commission on Childhood Vaccines (ACCV) Subcommittee on Vaccine Safety: Meetings.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meetings.

*Name:* National Vaccine Advisory Committee (NVAC).

*Times and Dates:* 9 a.m.–12:30 p.m., September 8, 1997; 8:30 a.m.–12 noon, September 9, 1997.

*Place:* Hubert H. Humphrey Building, Room 303A, 200 Independence Avenue, SW, Washington, DC 20201.

*Status:* Open to the public, limited only by the space available.

*Notice:* In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each day either between 8 and 8:30 a.m. or 12:30 and 1 p.m. so they can be escorted to the meeting. Entrance to the meeting at other times during the day cannot be assured.

*Purpose:* This committee advises and makes recommendations to the Director of the National Vaccine Program on matters related to the Program responsibilities.

*Matters To Be Discussed:* Agenda items will include a National Vaccine Program Office (NVPO) update; discussions on immunization coverage: Strategies to sustain success; accountability for immunization: Closing the gaps; immunization registries: Workshop plans; vaccine safety datalink: Local and national perspectives; surveillance for adverse events following vaccination: Options for funding; mucosal vaccines: Status, potential and current research; utilization of non-traditional sites for adult immunization; IPV/OPV: Impact of revised recommendations on coverage; clarifying harmonization of package labeling and recommendations of advisory groups. There will be an update on plans to address concerns following the Edmonston-Zagreb Measles Vaccine Investigation in Los Angeles, California. Also, there will be reports from the work group on philosophic objections; reports from the Subcommittee on Immunization Coverage; Subcommittee on Future Vaccines; and the Subcommittee on Vaccine Safety.

*Name:* Subcommittee on Immunization Coverage.

*Time and Date:* 1:30 p.m.–5 p.m., September 8, 1997.

*Place:* Hubert H. Humphrey Building, Room 423A, 200 Independence Avenue, SW, Washington, DC 20201.

*Status:* Open to the public, limited only by the space available.

*Purpose:* This subcommittee will identify and propose solutions that provide a multifaceted and holistic approach to reducing barriers that result in low immunization coverage for children.

*Matters To Be Discussed:* This subcommittee will hold a discussion on the review of recommendations from the document, ''Strategies to Sustain Immunization Coverage'', and the finalization of those recommendations.

*Name:* Subcommittee on Future Vaccines.

*Time And Date:* 1:30 p.m.–5 p.m., September 8, 1997.

*Place:* Hubert H. Humphrey Building, Room 405A, 00 Independence Avenue, SW, Washington, DC 20201.

*Status:* Open to the public, limited only by the space available.

*Purpose:* The Subcommittee on Future Vaccines will develop policy options and guide national activities which will lead to accelerated development, licensure, and best use of new vaccines in the simplest possible immunization schedules.

*Matters To Be Discussed:* This subcommittee will hold discussions regarding the Cold Spring Harbor Report; combination vaccines, strategic options; and defining future vaccines policy issues for traveler's vaccines.

*Name:* Subcommittee on Vaccine Safety and the Advisory Commission on Childhood Vaccines, Subcommittee on Vaccine Safety.

*Time And Date:* 1:15 p.m.–4:45 p.m., September 9, 1997.

*Place:* Hubert H. Humphrey Building, Room 303A, 200 Independence Avenue, SW, Washington, DC 20201.

*Status:* Open to the public, limited only by the space available.

*Purpose:* This joint NVAC/ACCV subcommittee will review issues relevant to vaccine safety and adverse reactions to vaccines.

*Matters To Be Discussed:* This subcommittee will hold discussions regarding the vaccine safety subcommittee goals; a report from the Task Force on Safer Childhood Vaccines; a project report on benefit-risk communication curriculum development; and agenda items for next meeting.

Agenda items are subject to change as priorities dictate.

*Contact Person For More Information:* Felecia D. Pearson, Committee Management Specialist, NVPO, CDC, 1600 Clifton Road, NE, M/S D50, Atlanta, Georgia 30333, telephone 404/639–7250.

Dated: August 18, 1997.

**Nancy C. Hirsch,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 97–22470 Filed 8–21–97; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Notice of Lien.

*OMB No.:* 0970–0153.

*Description:* Section 324 of PRWORA '96 (Pub. L. 104–193), requires DHHS to promulgate a standard lien form for use by the State CSE programs to secure delinquent child support obligations in interstate cases.

*Respondents:* States.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Lien | 53,254 | 1 | 0.25 | 13,313 |

*Estimated Total Annual Burden Hours:* 13,313.

*Additional Information:* Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: August 18, 1997.

**Bob Sargis,**

*Acting Reports Clearance Officer.*

[FR Doc. 97–22285 Filed 8–21–97; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Administrative Subpoena.

*OMB No.:* 0970–0152.

*Description:*

*Respondents:* Individuals and Households; not-for-profit institutions; business or other for-profit; and State, Local or Tribal Govt.

*Annual Burden Estimates:*

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Subpoena | 15,391 | 1 | 0.5 | 7,696 |

*Estimated Total Annual Burden Hours:* 7,696.

*Additional Information:* Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: August 18, 1997.

**Bob Sargis,**

*Acting Reports Clearance Officer.*

[FR Doc. 97–22286 Filed 8–21–97; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

*Name of Committee:* General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA regulatory issues.

*Date and Time:* The meeting will be held on September 15, 1997, 10 a.m. to 5:30 p.m., and September 16, 1997, 8 a.m. to 12 m.

*Location:* Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

*Contact Person:* Martha T. O'Lone, Center for Devices and Radiological Health (HFZ-480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-443-8913, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12520. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* On September 15 and 16, 1997, the committee will discuss and make recommendations on the draft guidance entitled ''Testing for Skin Sensitization to Chemicals in Latex Products.'' Single copies of this draft guidance are available to the public from the Division of Small Manufacturers Assistance, 1350 Piccard Dr., Rockville, MD 20851, 1-800-638-2041, or on the Internet using the World Wide Web (WWW) (http://www.fda.gov/cdrh/draftgui.html).

*Procedure:* On September 15, 1997, from 10:30 a.m. to 5:30 p.m., and September 16, 1997, from 8 a.m. to 12 m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by August 9, 1997. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 m. on September 15, 1997. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact

person before August 9, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

*Closed committee deliberations:* On September 15, 1997, from 10 a.m. to 10:30 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). FDA staff will present trade secret and/or confidential information regarding pending and future submissions.

FDA regrets that it was unable to publish this notice 15 days prior to the September 15 and 16, 1997, General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 19, 1997.

**Michael A. Friedman,**

*Deputy Commissioner for Operations.*

[FR Doc. 97–22556 Filed 8–20–97; 2:10 pm]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[HCFA–255]**

### 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:* Municipal Health Services Cost Report Form, and supporting regulations 42 CFR 405.371; *Form No.:* HCFA–255; *Use:* The Municipal Health Services Program (MHSP) Cost Report (HCFA–255) is used by the participating MHSP clinics to report costs for health care services rendered to Medicare beneficiaries. It is also used to gather data to properly evaluate the MHSP demonstration. This form has been used since 1979. *Frequency:* Annually; *Affected Public:* Not-for-profit institutions, and State, Local or Tribal Government; *Number of Respondents:* 14; *Total Annual Responses:* 14; *Total Annual Hours:* 476.

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, DC 20503.

Dated: August 8, 1997.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.*

[FR Doc. 97–22343 Filed 8–21–97; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office for Protection From Research Risks; Proposed Collection; Comment Request; Protection of Human Subjects: Assurance Identification/Certification/Declaration

**SUMMARY:** In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office for Protection from Research Risks (OPRR), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

**Proposed Collection**

*Title:* Protection of Human Subjects: Assurance Identification/Certification/Declaration. *Type of Information Collection Request:* Extension. *OMB Control Number:* 0925–0418. *Expiration Date:* 12/31/97. *Need and Use of Information Collection:* The Federal Policy for the Protection of Human Subjects was promulgated on June 18, 1991 (56 FR 28003) and requires applicant and awardee institutions receiving Federal funds to initiate procedures to report, disclose and keep required records for the protection of human subjects of research. Optional Form 310, Protection of Human Subjects: Assurance Identification/Certification/Declaration is necessary for the implementation and administration of the reporting and recordkeeping requirements set forth in the Federal Policy. *Frequency of Response:* On occasion. *Affected Public:* Individuals or households; Business or other for-profit; Not for-profit institutions; Federal Government; State, local or tribal government. *Type of Respondents:* Researchers. The annual reporting burden is as follows: *Estimated Number of Respondents:* 3,831. *Estimated Number of Responses per Respondent:* 56.8. *Average burden hours per response:* 0.755; and *Estimated Total Annual Burden Hours Requested:* 164,428. The annualized cost to respondents is estimated at: $2,096. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

**Request for Comments**

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the

following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION:** To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Michele Russell-Einhorn, Director of Regulatory Affairs, Office for Protection from Research Risks, NIH, 6100 Executive Blvd., Suite 3B01, Rockville, MD 20892–7507, or call non-toll-free number (301) 496–7005 x236 or E-mail your request, including your address to: <Einhonrm@OD31tm1.od.nih.gov>.

**Comments Due Date**

Comments regarding this information collection are best assured of having their full effect if received on or before October 21, 1997.

Dated: August 14, 1997.

**Gary B. Ellis,**

*Director, OPRR.*

[FR Doc. 97–22283 Filed 8–21–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following National Library of Medicine Special Emphasis Panel (SEP) meeting.

*Name of SEP:* National Library of Medicine Special Emphasis Panel.

*Date:* August 28, 1997.

*Closed:* 4:00 p.m. to adjournment.

*Place:* Conference Call, 8600 Rockville Pike, Bldg. 38A, Rm. 5S–504, Bethesda, Maryland 20894.

*Contact:* Peter Clepper, Acting Scientific Review Administrator, EP, 8600 Rockville Pike, Bldg. 38A, Rm. 5S–506, Bethesda, Maryland 20894, 301/496–4621.

*Purpose/Agenda:* To review Fellowship Grant applications.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93–879—Medical Library Assistance, National Institutes of Health)

Dated: August 18, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NLM.*

[FR Doc. 97–22282 Filed 8–21–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4263–N–09]**

### Notice of Proposed Information Collection for Public Comment

**AGENCY:** Office of the Assistant Secretary for Policy Development and Research, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as requested by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due date: October 21, 1997.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, Room 8226, 451 7th Street SW., Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Ronald J. Sepanik at (202) 708–1060, Ext. 334 (this is not a toll-free number) for copies of the proposed questions and other available documents.

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as requested by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice 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 a 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 automation collection techniques or other forms of information technology.

This Notice also lists the following information:

*OMB Control Number:* 2528–0016.

*Title of Proposal:* The 1998 American Housing Survey—Metropolitan Sample.

*Description of the need for the information and proposed use:* The 1998 American Housing Survey—Metropolitan Sample (AHS–MS) provides a periodic measure of the size and composition of the housing inventory in selected metropolitan areas. Title 12, United States Code, Sections 1701Z–1, 1701Z–2(g), and 1701Z–10a mandates the collection of this information.

The 1998 survey is similar to previous AHS–MS surveys and collects data on subjects such as the amount and types of changes in the inventory, the physical condition of the inventory, the characteristics of the occupants, the persons eligible for and beneficiaries of assisted housing by race and ethnicity, and the number and characteristics of vacancies.

Policy analysts, program managers, budget analysts, and Congressional staff use AHS data to advise executive and legislative branches about housing conditions and the suitability of policy initiatives. Academic researchers and private organizations also use AHS data in efforts of specific interest and concern to their respective communities.

The Department of Housing and Urban Development (HUD) needs the AHS data for two important uses.

1. With these data, policy analysts can monitor the interaction among housing needs, demand and supply, as well as changes in housing conditions and costs, to aid in the development of housing policies and the design of housing programs appropriate for

different target groups, such as first-time home buyers and the elderly.

2. With these data, HUD can evaluate, monitor, and design HUD programs to improve efficiency and effectiveness.

*Members of affected public:* Households.

*Number of respondents:* 77,000.

*Frequency of response:* Once every six years.

*Time per respondent:* 34 minutes.

*Total hours to respond:* 43,633.

*Respondent's obligation:* Voluntary.

*Status of proposed information collection:* Pending OMB approval.

**Authority:** Title 13 U.S.C. Section 9(a), and Title 12 U.S.C. Section 1701z–1 et seq.

Dated: August 8, 1997.

**Lawrence L. Thompson,**

*Acting Deputy Assistant Secretary for Policy Development, Office of Policy Development and Research.*

[FR Doc. 97–22277 Filed 8–21–97; 8:45 am]

BILLING CODE 4210–62–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4263–N–08]**

## Notice of Proposed Information Collection for Public Comments

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due: October 21, 1997.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC. 20410–5000.

**FOR FURTHER INFORMATION CONTACT:** Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice 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.

This Notice also lists the following information:

*Title of Proposal:* Outline Specification.

*OMB Control Number:* 2577–0037.

*Description of the need for the information and proposed use:* The information on the form is used to identify various items of material and equipment and to identify the extent and type offsite work to be installed in a project. The information is supplied by the project architect to assure the PHA and HUD that suitable equipment and materials, which meet codes and HUD standards, will be incorporated into the project. The information is collected under the authority of Section 6(c) of the U.S. Housing Act of 1937.

*Agency Form Number:* Form HUD–5087.

*Members of the affected public:* State, Local or Tribal Government.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* 240 projects (specifications); 3.4 responses per project totaling 816 annual responses, three hours per response, 2,448 total reporting burden hours and 204 total recordkeeping hours.

*Status of the proposed information collection:* Extension without change.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 18, 1997.

**Kevin Emanuel Marchman,**

*Acting Assistant Secretary for Public and Indian Housing.*

BILLING CODE 4210–33–M

# Outline Specification

**U.S. Department of Housing and Urban Development**
Office of Public and Indian Housing

OMB Approval No. 2577-0012 (Exp. 10/30/97)

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. This information is collected under the authority of Section 6(c) of the U.S. Housing Act of 1937. Housing Agencies (HAs) contract with architects to prepare outline specifications to establish quality and kind of materials and equipment for projects being developed, or proposed to be developed under the Low-Income Housing Program. HUD and the HA will use the information to determine that specified items comply with code and HUD standards and are appropriate in the project. The information will also serve as a basis for reaching all major decisions as to materials and methods of construction, finish, equipment, for making the estimated project construction cost Responses to the collection of information are required to obtain a benefit The information requested does not lend itself to confidentiality.

| Local Authority or Developer: | Project Number: |
|---|---|
| Project Name: | Architect: |
| Location: | Date: |

**Instructions:** Describe all materials and equipment to be used. Include no alternates or equivalents. Show extent of work and typical details on drawings. Attach additional sheets if necessary to completely describe the work. The Cost Estimate will recognize quality products and materials in excess of acceptable minimums, when specified. Certain parts of the work cannot be put in their proper classification until more information about their materials and construction is known; therefore describe, under suitable categories below, the following: main service and other stairs, treads, risers, handrails, balusters, etc.; sound insulation of partitions and floors separating apartments and between apartments and public spaces, utility conduits and tunnels, waterproofing and draining, utilities, and related insulation; retaining walls; garages and accessory buildings; and off-site improvements required to serve the project such as roads, curbs, walks, utilities, storm sewers, planting, etc.

## 1. General Requirements

## 2. Site Work

| **Type of Soil** | Bearing Capacity |
|---|---|

**Material and thickness** of fill and base course.

**Demolition:** Construction of structures to be demolished and materials to be reused.

**Storm Drainage:** Culverts, pipes, manholes, catch basins, downspout connection (dry well, splash blocks, storm sewer).

**Site Preparation:** Tree protection, surgery, wells, walls, topsoil stripping, clearing, grubbing, and rough grading.

**Curbs and Gutters:** Type and material.

**Pavement:** Material and thickness of base and wearing surface for drives, parking areas, streets, alleys, courts, walks, drying yards and play areas. Steps, handrails, checkwalls.

**Equipment for Special Areas and Enclosures:** Play equipment, benches, fences.

**Finish Grading:** Approximate existing depth and method of improving topsoil. Extent of finish grading.

**Lawns and Planting:** Type, size, quantity and location of lawn seeded or sodded; ground cover and hedge material, trees, shrubs, etc.

**Note: This Outline is based on the "Uniform System" for Construction Specifications, Data Filing, and Cost Accounting developed by AIA, CSI, and AGC.**

**3. Concrete**

Concrete strength for exterior walls below and above grade, interior walls and partitions, piers, footings, columns and girders. Size, thickness and location on drawings. Note portions having reinforcing steel on drawings. Location, size and material of footing drains and outlets.

Structural system of concrete floors at basement, other floors and roof. Thickness of slabs and strength of concrete. Attached exterior concrete steps and porches. If more than one type of construction is used, list separately and state locations.

Slab Perimeter Insulation:

**4. Masonry**

Material and thickness of exterior walls above and below grade, interior walls and partitions, fire walls, stair, hall and elevator enclosures, chimneys, incinerators, veneer, sills, copings, etc.

**5. Metals**

| Miscellaneous Iron | Material | Size |
|---|---|---|
| Access Doors | | |
| Area Gratings | | |
| Lintels | | |
| Fire Escapes | | |

**Foundation Vents**

**Structural Steel:** (Framing or structural system used.)

**6. Carpentry**

**Size, spacing, and grade** of lumber to be used for floor, roof, exterior walls above grade and interior partition framing, subfloor, sheathing, underlayment and exterior finish materials (wood siding, shingles, asbestos siding, etc.).

**Grade and species** for interior and exterior finish woodwork.

## 7. Moisture Protection

**Materials and method** of waterproofing walls and slabs below grade, location, thickness or number of plies. Type of permanent protection of waterproofing (parging) if used. Method of dampproofing above grade. Flashing materials if other than sheet metal. Spandrel waterproofing.

| Thermal Insulation | Thickness | R-value & Type of Material | Method of Installation |
|---|---|---|---|
| Exterior Walls | | | |
| Ceiling Below Roof | | | |
| Roof | | | |
| Other | | | |

**Roofing:** Roof covering materials and method of application, weight of shingles, numbers of felt plies, bitumen, etc.

**Sheet Metal:** Material and weight or gauge for flashings, copings, gutters and downspouts, roof ventilators, scuppers, etc.

Caulking: (Materials and Locations)

## 8. Doors, Windows and Glass

**Windows and Frames:** Type and Material. Special construction features or protective treatment.

**Glazing**: Thickness, strength and grade of glass and method of glazing.

**Metal Curtain Walls:**

**Doors and Frames:**
Exterior: Thickness, material and type at all locations.

Interior: Thickness, material and type for public halls and stairs, apartments (entrance and interior), boiler rooms, fire doors and doors at other locations.

**Finish Hardware:** Material and finish of exterior and interior locksets, sliding and folding door hardware, window and cabinet hardware, door closers, door knockers, numbers, etc.

**8. Doors, Windows and Glass (Cont.)**

| Weatherstripping | Material | Type |
|---|---|---|
| Windows | | |
| Exterior Doors | | |
| Thresholds | | |
| Screens: Mesh Frames | | |

**9. Finishes**

**Grade, material, and thickness** of all finishes.

**Painting:**

| Exterior | Type | Number of Coats | Interior | Type | Number of Coats |
|---|---|---|---|---|---|
| Wood | | | Wood | | |
| Metal | | | Metal | | |
| Masonry | | | Walls & Ceilings | | |
| | | | Kitchen & Bath | | |

**Tile & Ceramic Bathroom Accessories:**

| Floor and Wall Covering: | Material (Thickness, grade, finish and wainscot height) | |
|---|---|---|
| Location | Floors | Walls |
| a. | | |
| b. | | |
| c. | | |
| d. | | |
| e. | | |
| **Bathroom Accessories** | Material | Quantity |
| Attached | | |
| Recessed | | |

**Resilient Flooring:** Location, type and gauge, for all materials.

**10. Specialties: (List Significant Items)**

**Interior partitions** other than concrete, masonry or wood.

**Medicine Cabinets:** Material, size and type.

| Mail Boxes, Package Receivers | Packaged Incinerators |
|---|---|
| | |

**11. Equipment**

**Refrigerators:** Capacity and type for each size of living unit.

**11. Equipment (Cont.)**

**Kitchen Ranges:** Size and type for each size of living unit

| **Kitchen Cabinets:** (Detail on drawings) | **Material** | **Finish** |
|---|---|---|
| Wall Units | | |
| Base Units | | |

**Counter Top and Backsplash Material**

**Other cabinerts and built-in storage units**

**Equipment:** Garbage disposal units, dishwashers, clothes washers and dryers

**12. Furnishings Shades:** Types of shades , draperies or other devices for privacy and control of natural light.

**13. Special Construction:**
(incinerator-Job Construction)

**14. Conveying Systems**
**Elevators:** Attach letter from manufacturer whose elevator installation is proposed, containing a brief comprehensive specification for the complete elevator installation, and the manufacturer's statement that the number of elevators proposed and the installation described will provide adequate service, and that manufacturer maintains an effective service organization in the project locality.

**15. Mechanical:**
**Plumbing and Hot Water Supply:**

Fixtures: (Material, size, fittings, trim and color)

Sink

Lavoratory

Water Closet

Bathtub

Shower Over Tub

Stall Shower

Laundry Trays

Other

**15. Mechanical (Cont.)**

**Piping:** (Material)

| | |
|---|---|
| Soil Lines | Gas Lines |
| Waste Lines | Standpipes |
| Vents | Interior Downspouts |
| Water | |

Valve Shutoff for Servicing

**Domestic Water Heating**
Direct fired (Type, capacity and recovery rate.)

Indirect fired (Separate boiler or combined with space heating boiler. Storage and recovery capacity.)

Solar Energy:

| | |
|---|---|
| Application | System |

Subsystem

System Capacity

Insulation: Type and thickness of insulation on water lines and water heating equipment.

Heating
Kind of System: Hot water, steam, forced warm air, gravity warm air, etc.

| | | |
|---|---|---|
| Fuel Used: | Calculated Load: | |
| Heating Load | Domestic Hot Water Load | Total |

Equipment: (Make & Model)

| | | |
|---|---|---|
| Input (per hr.): Coal (lbs.) | Oil (gals.) | Gas (BTUH) |

Output (BTUH)

Distribution System:

Insulation: Type and thickness of insulation on heating equipment and distribution system.

Room Heating Units: Baseboard units, radiators, convectors, registers, etc.

| | |
|---|---|
| Solar Energy:<br>Application | System |

Subsystem

System Capacity

**15. Mechanical (Cont.)**

Space Heaters: Type, make, model, location and output of heating systems such as wall heaters, floor furnaces and unit heaters.

Temperature Controls: Individual unit, zone, central, etc.

Ventilation: Location, capacity and purpose of ventilating fans.

**Air Conditioning**

Unitary Equipment (Self Contained or packaged units.)

Calculated Load:

Equipment: Make, model, operating voltage and capacity in BTUH for each size serving individual rooms, apartment units, or zone.

Central System:

Calculated Load:

Equipment (Make, model capacity, etc., of compressor, cooling tower, water chillers, air handling equipment, and other components which make up the complete system.)

**Utilities On-Site:** Material for distribution system for all piped utilities.

Water Supply: Fire hydrants, yard hydrants, lawn sprinkler systems, exterior drinking fountains.

Gas:

Sanitary Sewerage: Treatment plants, pumping stations, manholes.

**16. Electrical**

**Electrical Wiring:** Type of wiring and load centers, number of circuits per unit, individual unit metering or project metering, spare conduit for future load requirements, radio or TV antenna systems. Show receptacles, light outlets, switches, power outlets, telephone outlets, door bells, fire alarm systems, etc., on drawings.

**Electric Fixtures:** Type for various locations.

**16. Electrical (Cont.)**

**Electric light standards** for lighting grounds, streets, courts, etc. Underground or overhead service.

All items of construction, equipment and finish, together with all incidentals, which are essential to the completion of the project will be provided whether or not specifically included in the exhibits and will be of a type, quality and capacity acceptable to HUD and appropriate to the character of the project.

Signed (Local Authority or Developer)

By (Architect)

[FR Doc. 97–22278 Filed 8–21–97; 8:45 am]

BILLING CODE 4210–33–C

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4235–N–17]**

## Federal Property Suitable as Facilities to Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**EFFECTIVE DATE:** August 22, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: August 14, 1997.

**Jacquie M. Lawing,**

*General Deputy Assistant Secretary.*

[FR Doc. 97–22020 Filed 8–21–97; 8:45 am]

BILLING CODE 4210–29–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–3918–N–13]**

## Privacy Act of 1974; Notice of a Computer Matching Program

**AGENCY:** Department of Housing and Urban Development (HUD).

**ACTION:** Notice of a Computer Matching Program—HUD and Department of Veterans Affairs (VA).

**SUMMARY:** In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, as amended, (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public,'' the Department of Housing and Urban Development (HUD) is issuing a public notice of its intent to conduct a recurring computer matching program with the Department of Veterans Affairs (VA) to utilize a computer information system of HUD, the Credit Alert Interactive Voice Response System (CAIVRS), with VA's debtor files. This match will allow prescreening of applicants for loans or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal Government for HUD or VA direct or guaranteed loans. Before granting a loan, the lending agency and/or the authorized lending institution will be able to interrogate the CAIVRS debtor file which contains delinquent debt information from the Departments of Agriculture, Education, Veterans Affairs, the Small Business Administration and judgment lien data from the Department of Justice, and verify that the loan applicant is not in default on a Federal judgment or delinquent on direct or guaranteed loans of participating Federal programs. This match will allow prescreening of applicants for debts owed or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal Government.

Authorized users do a prescreening of CAIVRS to determine a loan applicant's credit status with the Federal Government. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision of any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

**EFFECTIVE DATE:** Computer matching is expected to begin 40 days after publication of this notice (October 1, 1997), unless comments are received which will result in a contrary determination, or 40 days from the date a computer matching agreement is signed, whichever is later.

**DATE:** Comments due by October 1, 1997.

**ADDRESSES:** Interested persons are invited to submit comments regarding this notice to the Rule Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION FROM RECIPIENT AGENCY CONTACT:** Jeanette Smith, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 7th St., SW, Room 4178, Washington, DC 20410, telephone number (202) 708–2374. (This is not a toll-free number.)

**FOR FURTHER INFORMATION FROM SOURCE AGENCY CONTACT:** Mark Gottsacker, Debt Management Center, Department of Veterans Affairs, Bishop Henry Whipple Federal Building, 1 Federal Drive, Room 156, Fort Snelling, Minnesota 55111–4050, telephone number (612) 725–1843. (This is not a toll-free number.)

### Reporting

In accordance with Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and Office of Management and Budget Bulletin 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public;'' copies of this Notice and report are being provided to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

### Authority

The matching program will be conducted pursuant to Pub. L. 100–503, ''The Computer Matching and Privacy Protection Act of 1988,'' as amended, and Office of Management and Budget (OMB) Circulars A–129 (Managing Federal Credit Programs) and A–70 (Policies and Guidelines for Federal Credit Programs). One of the purposes of all Executive departments and agencies—including HUD—is to implement efficient management practices for Federal credit programs. OMB Circulars A–129 and A–70 were issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982, as amended; and, the Deficit Reduction Act of 1984, as amended.

**Objectives To Be Met by the Matching Program**

The matching program will allow VA access to a system which permits prescreening of applicants for loans or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Government. In addition, HUD will be provided access to VA debtor data for prescreening purposes.

**Records To Be Matched**

HUD will utilize its system of records entitled HUD/DEPT–2, *Accounting Records*. The debtor files for HUD programs involved are included in this system of records. HUD's debtor files contain information on borrowers and co-borrowers who are currently in default (at least 90 days delinquent on their loans); or who have any outstanding claims paid during the last three years on Title II insured or guaranteed home mortgage loans; or individuals who have defaulted on Section 312 rehabilitation loans; or individuals who have had a claim paid in the last three years on a Title I loan. For the CAIVRS match, HUD/DEPT–2, System of Records, receives its program inputs from HUD/DEPT–28, Property Improvement and Manufactured (Mobile) Home Loans—Default; HUD/DEPT–32, Delinquent/Default/Assigned Temporary Mortgage Assistance Payments (TMAP) Program; and HUD/CPD–1, Rehabilitation Loans-Delinquent/Default.

The VA will provide HUD with debtor files contained in its system of records entitled SS–VA26, Loan Guaranty Systems of Records. Central Accounts Receivable On Line System is a subsidiary of SS–VA26. HUD is maintaining VA's records only as a ministerial action on behalf of VA, not as a part of HUD's HUD/DEPT–2 system of records. VA's data contain information on individuals who have defaulted on their guaranteed loans. The VA will retain ownership and responsibility for their systems of records that they place with HUD. HUD serves only as a record location and routine use recipient for VA's data.

**Notice Procedures**

HUD and the VA will notify individuals at the time of application (ensuring that routine use appears on the application form) for guaranteed or direct loans that their records will be matched to determine whether they are delinquent or in default on a Federal debt. HUD and the VA will also publish notices concerning routine use disclosures in the **Federal Register** to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the Federal Government.

**Categories of Records/Individuals Involved**

The debtor records include these data elements from HUD's systems of records, HUD/Dept–2; SSN, claim number, program code, and indication of indebtedness. Categories of records include: Records of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures.

Categories of individuals include former mortgagors and purchasers of HUD-owned properties, manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans, and rehabilitation loan debtors who are delinquent or in default on their loans.

**Period of the Match**

Matching will begin at least 40 days from the date copies of the signed (by both Data Integrity Boards) computer matching agreements are sent to both Houses of Congress or at least 40 days from the date this Notice is published in the **Federal Register,** whichever is later, providing no comments are received which would result in a contrary determination. The matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other in writing to terminate or modify the agreement.

Issued at Washington, DC August 13, 1997.

**Steven M. Yohai,**

*Chief Information Officer.*

[FR Doc. 97–22276 Filed 8–21–97; 8:45 am]

BILLING CODE 4210–32–M

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Notice of Availability of the Draft Conservation Agreement for the Wonderland Alice-flower (Gilia Caespitosa) for Review and Comment

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability and public comment period.

**SUMMARY:** The Fish and Wildlife Service announces the availability of a Draft Conservation Agreement for the Wonderland Alice-flower (*Gilia caespitosa*). This species is a candidate for listing as endangered or threatened under the provisions of the Endangered Species Act of 1973, as amended. The Draft Conservation Agreement was developed jointly by the U.S. Bureau of Land Management, U.S. Forest Service, National Park Service, and the Fish and Wildlife Service as a collaborative and cooperative effort. The agreement focuses on identifying, reducing and eliminating significant threats to the species that warrant its candidate status, and on enhancing and maintaining the species population to ensure its long term conservation. The Fish and Wildlife Service solicits review and comment from the public on this draft agreement.

**DATES:** Comments on the Draft Conservation Agreement must be received on or before September 22, 1997 to be considered by the Fish and Wildlife Service during preparation of the final Conservation Agreement and prior to the Fish and Wildlife Service's determination of whether or not it will be a signatory party to the agreement.

**ADDRESSES:** Persons wishing to review the Draft Conservation Agreement may obtain a copy by contacting the Assistant Field Supervisor, U.S. Fish and Wildlife Service, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115. Written comments and materials regarding the Draft Conservation Agreement should also be directed to the same address. Comments and materials received will be available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert D. Williams, Assistant Field Supervisor (see **ADDRESSES** section) (telephone 801/524–5001).

**SUPPLEMENTARY INFORMATION:**

### Background

*Gilia caespitosa* is a rare vascular plant of the phlox family (Polemoniaceae). The species is restricted to limited area in Wayne County, Utah primarily on Federal lands managed by the Richfield District of the Bureau of Land Management and within Capitol Reef National Park. Smaller occurrences are located within the Dixie and Fishlake National Forests, on State of Utah Land, and on private property.

*Gilia caespitosa* is currently a candidate species for listing under the provisions of the Endangered Species Act, in the Fish and Wildlife Service's most recent Notice of Review (61 FR 7596). The Agreement focuses on the following goals: (1) Ensure that existing regulatory mechanisms and agency funding is available to provide for the

long-term management of *G. Caespitosa*. (2) Inventory potential habitat for additional occurrences of the species. (3) Identify and establish management guidelines which will ensure overall long term survivability of the species.

**Public Comments Solicited**

The Fish and Wildlife Service will use information received during the public comment period in its determination as to whether it should be a signatory party to the agreements.

Comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the draft documents are hereby solicited. All comments and materials received will be considered prior to the approval of any final document.

Author: The primary author of this notice is John L. England (see **ADDRESSES** section) (telephone 801/524-5001).

**Authority:** The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: August 15, 1997.

**Elliott N. Sutta,**

*Acting Regional Director, Denver, Colorado.*

[FR. 97–22312 Filed 8–21–97; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(a) notice is hereby given that the Chilkoot Kaagwaantaan Clan, P.O. Box 275, Haines, Alaska 99827 has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on April 22, 1997, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and interested parties at the appropriate time.

Under Section 83.9(a) of the Federal regulations, parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Third parties are required to submit copies of their comments directly to the petitioner. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 3427–MIB, 1849 C Street, N.W., Washington, D.C. 20240, Phone: (202) 208–3592.

Dated: July 31, 1997.

**Hilda Manuel,**

*Deputy Commissioner of Indian Affairs.*

[FR Doc. 97–22297 Filed 8–21–97; 8:45 am]

BILLING CODE 4310–02–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## Proposed Finding Against Federal Acknowledgment of the Chinook Indian Tribe

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of proposed finding.

**SUMMARY:** Pursuant to 25 CFR 83.9(f), notice is hereby given that the Assistant Secretary—Indian Affairs (Assistant Secretary) proposes to decline to acknowledge that the Chinook Indian Tribe, Inc., P.O. Box 228, Chinook, WA 98614, exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the group does not satisfy three of the seven criteria set forth in 25 CFR 83.7, and therefore does not meet the requirements for a government-to-government relationship with the United States.

**DATES:** As provided by 25 CFR 83.9(g), any individual or organization wishing to comment on this proposed finding may submit arguments and evidence to support or rebut the evidence relied upon. This material must be submitted on or before December 22, 1997. Interested parties who submit arguments and evidence to the Assistant Secretary should provide copies of their submissions to the petitioner as well.

**ADDRESSES:** Comments on the proposed finding and/or requests for a copy of the report of evidence should be addressed to the Office of the Assistant Secretary, Bureau of Indian Affairs, 1849 C Street NW, Washington, DC, 20240, Attention: Branch of Acknowledgment and Research, Mailstop 4603–MIB.

**FOR FURTHER INFORMATION CONTACT:** Holly Reckord, Chief, Branch of Acknowledgment and Research, (202) 208–3592.

**SUPPLEMENTARY INFORMATION:** This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary by 209 DM 8. The Chinook Indian Tribe's petition was under active consideration at the time that the revised regulations became effective on March 28, 1994. The petitioner was given the choice under 25 CFR 83.5(f) of the revised regulations of being evaluated under the 1994 revised regulations or the regulations that were published on September 5, 1978. The Chinook Indian Tribe, by letter dated April 21, 1994, requested that the BIA continue to evaluate its petition under the 1978 regulations. Therefore, all references to 25 CFR part 83 in this notice will refer to the 1978 regulations.

The Chinook Indian Tribe petitioner consists primarily of descendants of the historical Lower Band of Chinook Indians. While most of the petitioner's members can trace their ancestry back to the Lower Band of Chinook, the petitioner has not existed as a tribal entity continuously since the time of first sustained contact in 1811 between the historical Lower Band of Chinook and non-Indians. The petitioner's ancestors were identified as an Indian entity by external sources from 1792 to at least 1855. The available evidence indicates that the petitioner, as a whole, has not formed a distinct social or geographical community since 1880. The evidence also demonstrates that the petitioner has not exercised political authority over its members since 1855.

Of the seven mandatory criteria for Federal acknowledgment as an Indian tribe, the petitioner has met criteria (d), (e), (f), and (g), but has failed to meet criteria (a), (b), and (c).

At the time of first sustained contact with non-Indians, the historical Lower Band of Chinook was described as living in villages along the north shore of the Columbia River where it empties into the Pacific Ocean. There were also Lower Chinook villages along the tributaries that fed into the Columbia River and into Shoalwater Bay. Three other bands of Chinookan-speaking Indians lived in proximity to the Lower Band of Chinook: the Wahkiakum, the Kathlamet, and the Clatsop. Federal negotiators signed treaties with each of

these Chinookan bands in 1851, but the treaties were never ratified. In 1855, the Federal Government attempted to negotiate another treaty with the Lower Chinook, but the Chinook refused to sign that treaty. In 1951, some Chinook descendants formed an organization to pursue a compensation claim for aboriginal Chinook lands. Although its secretary claimed that the group had previously formed an organization in 1925, there is no contemporary evidence which demonstrates that there was a Chinook organization between 1925 and 1951. The organization split in 1953 into two Chinook councils, the Chinook Nation and the Chinook Tribes, Inc. The available evidence indicates that the Chinook Tribes, Inc., ceased to function about 1958. In 1970, a new Chinook organization, the Chinook Indian Tribe, Inc., was formed by some Chinook descendants at Ilwaco. This is the organization that is petitioning for Federal acknowledgment.

The petitioner has satisfied criterion (e) because the available evidence demonstrates that approximately 85 percent of its 1995 members descend from either the Lower Chinook, Wahkiakum, Kathlamet, or Clatsop Indian tribes, with almost all of these individuals having descent from the Lower Band of Chinook. Approximately another 15 percent of the petitioner's members descend from Rose LaFramboise. Some evidence indicates that she descended from a Lower Band of Chinook family, and other evidence suggests she was the daughter of a Hudson's Bay Company employee and a Cayuse/Sioux métis woman. Whatever her specific ancestry, the evidence indicates that Rose LaFramboise and her descendants who lived in Cathlamet and Skamokawa were associated with Chinook descendants since the 1870's, and that her family was an accepted part of previous Chinook organizations.

The petitioner has met criterion (d) by providing a copy of the constitution of the Chinook Indian Tribe, Inc., which was adopted on June 16, 1984. This constitution, which is currently in effect, describes the petitioner's membership criteria. There is no evidence that a significant percentage of the petitioner's members belong to any federally-recognized tribe, and therefore it meets criterion (f). About three percent of the petitioner's members descend exclusively from the Clatsop Tribe, over which Federal supervision was terminated by the Western Oregon Termination Act of 1954 (68 Stat. 724). Under this act, these members would not be eligible for services from the Bureau of Indian Affairs. Neither this act nor any other legislation, however, terminated the Chinook of Washington State, so the petitioner as an entity meets criterion (g).

The Chinookan Indians lived in isolated, homogeneous Indian villages until about 1855, which is sufficient to meet the requirements of criterion (b) until that year. The available evidence demonstrates that Chinook descendants continued to form a distinct social community until 1880, based on the fact that they were fishing together at Chinookville, a village inhabited almost exclusively by Chinook descendants, and because of the primary kinship relations between them.

Chinookville ceased to exist sometime before the 1900 Federal census was taken, and probably soon after the 1880 census was recorded. By 1900, the Chinook descendants who remained in the Chinook aboriginal territory were primarily concentrated in three locations: Bay Center, Dahlia, and Ilwaco. Bay Center had the largest number of Chinookan descendants, and about half of them lived in a segregated part of the town known as Goose Point. The Chinookan descendants at Bay Center lived with other Indians from western Washington in a distinct Indian community until about 1920. There is evidence that the Chinookan Indians living at Goose Point continued to speak the Chehalis language at least as late as 1900, supported a Shaker Church until about 1920, and were part of the Shoalwater Bay Indian Reservation community as late as 1920. There is insufficient evidence to conclude that the Chinook residents at Dahlia formed a separate geographical community at any point in time. There is some very limited evidence, based on primary kinship relations, that the residents of Dahlia may have been a separate social community until 1932, but this conclusion cannot be reached based on the limited data provided. Also, there is no evidence that the Chinook residents of Ilwaco formed a community. There is very little evidence that suggests the Chinook descendants in Bay Center and Dahlia were ever a single social community. Because there is no evidence that the petitioner's ancestors, or their members, as a whole, have ever formed a single social community at any time since 1880, the petitioner does not meet criterion (b) since that date.

Because the petitioner's Lower Band of Chinook ancestors had headmen who negotiated treaties with the Federal Government in 1851 and 1855, the petitioner meets the requirements of criterion (c) until 1855. Some evidence suggests that Shoalwater Bay Indians (the Indians living on Shoalwater Bay Indian Reservation and those in Bay Center) acted as a group or had leadership from the 1870's to the 1920's, but not that they acted together with Chinook descendants in Ilwaco or Dahlia. The available evidence does not reveal that an existing group decision-making process was utilized to decide to bring claims suits in 1899 and 1925. The Court of Claims concluded in 1906 that the Lower Band of Chinook had ''long ceased to exist,'' and a Federal district court in 1928 concluded that the Chinook had lost their tribal organization. Although the petitioner contends that the Chinook formed a formal organization and a tribal council in 1925, no contemporaneous evidence supports this claim. There is some evidence of leadership by one individual between 1927 and 1932 to gather witnesses for a claims case and data to obtain allotments of land for Chinook descendants, but the available evidence does not reveal that she exercised political influence over the Chinook descendants between 1925 and 1951. In 1951, a formal Chinook organization was formed soon after a petition was submitted to the Indian Claims Commission. Although it claimed continuity with an earlier council, the Indian agency superintendent concluded that any earlier organization had disappeared. In 1953, two Chinook councils were formed; one was active until 1958, and the other until 1967. The modern petitioner's organization was formed in 1970. Its minutes demonstrate that participation by members was very low during the 1970's. The petitioner's evidence of correspondence between the council chairman and external government and Indian representatives does not provide evidence of an internal political process among its members. The available evidence does not demonstrate that there were leaders who exercised political authority or influence over the group as a whole from 1856 to the present. Therefore, the petitioner meets criterion (c) to 1855, but does not meet criterion (c) from 1856 to the present.

A historical Chinook tribe or band at the mouth of the Columbia River was identified by explorers, traders, missionaries, and Government agents from the 1790's into the 1850's. The Federal Government clearly identified the Lower Chinook Indians as an Indian entity by negotiating treaties with them in 1851 and 1855. The Government expressed some responsibility for Chinook Indians until the Quinault Reservation was expanded in 1873, but from the 1850's into the 1870's its Indian agents also distinguished the

Indians of Shoalwater Bay from the Chinook Indian descendants along the Columbia River. During the early-20th century, some non-Indians identified an Indian village at Bay Center, but concentrations of Chinook descendants at Ilwaco and Dahlia were not identified as Indian entities, or as parts of a single Indian entity in conjunction with the Bay Center Indian community. From the 1930's to the 1950's, anthropologists recognized that some Chinook descendants were still living, but agreed that they had lost their traditional culture and tribal organization. Since 1951, the Bureau of Indian Affairs, local governments, and local newspapers have noted the existence of three different organizations of Chinook descendants, but have not credited them with continuity with each other. Because external sources have not continuously identified the petitioner from 1855 to the present on a substantially continuous basis, the petitioner does not meet criterion (a).

Dated: August 11, 1997.

**Ada E. Deer,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 97–22298 Filed 8–21–97; 8:45 am]

BILLING CODE 4310–02–P

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## DEPARTMENT OF AGRICULTURE

### Forest Service

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–962–1430–00-CCAM]**

### Notice of Availability for the Cooke City Area Mineral Withdrawal Record of Decision; Montana

**AGENCY:** Forest Service, Agriculture; Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Record of Decision (ROD) on the final environmental impact statement (EIS) for the Cooke City Area Mineral Withdrawal is available. The ROD documents the selection of the Preferred Alternative, the mineral withdrawal of approximately 22,065 acres of Federal land, and provides background information and rationale for the decision. The ROD also documents the decision to amend the Custer and Gallatin Forest Plans to reflect the intent of the mineral withdrawal.

**FOR FURTHER INFORMATION CONTACT:** John Thompson, BLM Co-Lead, or Larry Timchak, FS Co-Lead, CCAM, BLM Montana State Office, PO Box 36800, Billings, Montana 59107–6800, 406–255–0322.

**SUPPLEMENTARY INFORMATION:** The Final EIS for the Cooke City Area Mineral Withdrawal was released and made available for a 30-day public availability period on July 11, 1997. The final EIS documents the effects of withdrawing from federal mineral location and entry 22,065 acres of federal mineral estate near Cooke City, Montana. The mineral withdrawal would also apply to hardrock minerals acquired by the United States and managed as leasable minerals. The mineral withdrawal would be subject to review after 20 years. Forest plans for the Custer and Gallatin National Forests would be amended to reflect the intent of the mineral withdrawal. Unpatented mining claims with valid existing rights and private lands would not be affected. The decisions are not subject to administrative appeal or protest under Forest Service and BLM regulations.

Dated: August 12, 1997.

**James R. Lyons,**

*Under Secretary Natural Resources and Environment.*

**Bob Armstrong,**

*Assistant Secretary of the Interior for Lands and Minerals Management.*

[FR Doc. 97–21970 Filed 8–21–97; 8:45 am]

BILLING CODE 4310–DN–P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–060–1020–00]**

### Lewistown District Resource Council Meeting

**AGENCY:** Bureau of Land Management, Lewistown District Office.

**ACTION:** Notice of meeting.

**SUMMARY:** The Lewistown District Resource Advisory Council will meet September 10 and 11, 1997, at the Cotton Wood Inn, on Highway 2 East, in Glasgow, Montana.

The September 10 portion of the session will begin at 7 a.m. with a tour of the Bitter Creek Wilderness Study Area in the morning and the Missouri/Lonetree Watershed in the afternoon. The council should return to Glasgow around 5 p.m.

The September 11 portion will begin at 8 a.m. at the Cotton Wood Inn in Glasgow. The meeting will begin with a review of old business including the Lonesome Lake project, the Lewistown District's project list, proposed council charter revisions, moisture conditions throughout the district, and comments concerning grazing standards and guidelines.

The District Manager will also discuss the recent appointment of Mr. Pat Shea as Director of the Bureau of Land Management.

New council members will be introduced and if necessary, the group will address the election of officers and other matters of organization.

The group will hear/consider presentations concerning the Eye of the Needle, flooding earlier on the Upper Missouri National Wild and Scenic River, the status of the Devil's Kitchen plan amendment, current status of the Rocky Mountain Elk Foundation's Two Crow acquisition, proposed range improvements in the district, the need for a revised council mission statement, the status of prairie dogs in the Phillips Resource Area, the Judith-Valley-Phillips oil and gas amendment, and off-road-vehicle regulation implementation.

There will be a public comment period at 11:30 a.m. during the September 11 meeting.

**DATES:** September 10 and 11, 1997.

**LOCATION:** Glasgow, MT.

**FOR FURTHER INFORMATION CONTACT:** District Manager, Lewistown District Office, Bureau of Land Management, P.O. Box 1160, Airport Road, Lewistown, MT 59457.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public and there will be a public comment period as detailed above.

Dated: August 11, 1997.

**David L. Mari,**

*District Manager.*

[FR Doc. 97–22304 Filed 8–21–97; 8:45 am]

BILLING CODE 4310–DN–P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[UT–020–07–1430–00]**

### Notice of Availability for Proposed Plan Amendment to the Pony Express Resource Management Plan in the Salt Lake District, UT

**AGENCY:** Bureau of Land Management, Interior.

**SUMMARY:** The Bureau of Land Management completed a Proposed Plan Amendment/EA/FONSI for the Pony Express Resource Management Plan (RMP) August 11, 1997. The proposed plan amendment specifically addresses the management of resources and land uses in the North Oquirrh Mountains on a total of 14,254 acres of public land, of which 8,291 acres have been acquired

since the Pony Express RMP was completed in 1990. The proposed plan amendment also provides for amendment of the land tenure adjustment criteria throughout the Pony Express RMP area. A Notice of Intent proposing to amend the RMP was published in the **Federal Register** on June 24, 1996.

**DATES:** A 30 day protest period for the planning amendment will commence with publication of this Notice. Protests must be received on or before September 22, 1997.

**ADDRESSES:** Protests to the proposed plan amendment should be addressed to the Director (WO–210), Bureau of Land Management, Attn: Brenda Williams, Resource Planning Team, 1849 C Street, NW., Washington, DC 20240, within 30 days after the date of publication of this Notice for the proposed planning amendment.

**FOR FURTHER INFORMATION CONTACT:** Mike Nelson, Realty Specialist, Bureau of Land Management, Salt Lake District, 2370 South 2300 West, Salt Lake City, Utah 84119, telephone (801) 977–4355.

**SUPPLEMENTARY INFORMATION:** This plan amendment is subject to protest from any adversely affected party who participated in the planning process. Protests must be made in accordance with provisions of 43 CFR 1610.5–2, as follows: Protests must pertain to issues that were identified in the plan or through the public participation process. As a minimum, protests must contain the name, mailing address, telephone number, and interest of the person filing the protest. A statement of the issue or issues being protested must be included. A statement of the part or parts being protested and a citing of pages, paragraphs, maps, etc., of the proposed amendment, where practical, should be included. A copy of all documents addressing the issue(s) submitted by the protester during the planning process or a reference to the date when the protester discussed the issue(s) for the record. A concise statement as to why the protester believes the BLM State Director's decision is incorrect.

Dated: August 15, 1997.

**G. William Lamb,**

*State Director.*

[FR Doc. 97–22382 Filed 8–21–97; 8:45 am]

BILLING CODE 4310–DQ–P

## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## Intent To Prepare a Draft Environmental Impact Statement for Chevron U.S.A. Inc.'s Proposed Destin Dome 56 Unit Development and Production Plan Offshore Florida

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of intent (NOI) to prepare a draft environmental impact statement (DEIS).

**SUMMARY:** Chevron U.S.A. Inc. proposes to conduct natural gas development and production activities in the Eastern Gulf of Mexico offshore Florida. Chevron U.S.A. Inc. filed their development and production plan (DPP) with the Minerals Management Service (MMS), Gulf of Mexico OCS Regional Office on November 19, 1996. The DPP was deemed complete on August 12, 1997. The MMS will prepare a DEIS for the plan. It is anticipated that the overall EIS process will take about 2 years.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning the DEIS should be directed to Mr. Dennis Chew, Environmental Assessment Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2793.

**SUPPLEMENTARY INFORMATION:**

1. Authority. Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act, the MMS is announcing its intent to prepare a DEIS on Chevron U.S.A. Inc.'s proposed natural gas development and production project offshore Florida. The NOI also serves to announce the scoping process that will be followed for this DEIS. Throughout the scoping process, Federal and State agencies, local governments, and other interested parties will have the opportunity to aid the MMS in determining the scope of the DEIS, significant issues that should be addressed, and alternatives to be considered.

2. Proposed Action. Chevron U.S.A., Inc. proposes to conduct development and production activities in an 11-block unit in the Destin Dome Area of the Eastern Gulf of Mexico Planning Area, about 25 miles offshore Florida, due south of Pensacola (see attached map). The proposed action will be a natural gas development project producing from a geological formation known as the Norphlet Formation. Preliminary tests have indicated that production will consist of significant quantities of natural gas. Chevron proposes to drill 11–20 new wells and install 2 central processing facilities in the 11-block unit. One existing exploratory well will be completed and put on production. The ''expected scenario'' is a total of 12 wells producing up to 300 million cubic feet of gas per day (MMcfd). The ''maximum scenario'' is a total of 21 wells producing up to 450 MMcfd. A 30-inch export pipeline would transport the gas from the Destin Dome Unit to the Mobile Area, Block 916, offshore Alabama. The gas would be treated at existing facilities offshore Alabama or at existing onshore gas processing plants in Mobile County, Alabama. The shorebase for the project will be Theodore, Alabama, or Pascagoula, Mississippi.

3. Alternatives. Alternatives will include the action as proposed by Chevron U.S.A. Inc. in their DPP and no action. Other possible alternatives that may be considered include variations of the proposed action and alternatives identified during the scoping process.

4. Scoping. Scoping is an open and early process for determining the scope of the DEIS and for identifying significant issues related to a proposed action. Scoping also provides an opportunity to identify alternatives to the proposed action. For the subject DEIS, public scoping meetings are planned for Pascagoula, Mississippi; Theodore, Alabama; and Pensacola, Panama City, and Tallahassee, Florida. Additional information regarding the scoping meetings will be distributed to interested parties and details of the actual dates, times, and facilities for the meetings will be advertised in local media. Public information versions of the Destin Dome Unit DPP submitted by Chevron U.S.A. Inc. are available for review at the following locations:

Minerals Management Service, Eastern Gulf Information Office, Pensacola, Florida

Jackson-George Regional Library, Pascagoula, Mississippi

Eudora Welty Library, Jackson, Mississippi

Thomas B. Norton Public Library, Gulf Shores, Alabama

University of South Alabama, Mobile, Alabama

Alabama Public Library Service, Montgomery, Alabama

Fort Walton Beach Public Library, Fort Walton Beach, Florida

Bay County Public Library, Panama City, Florida

West Florida Regional Library, Pensacola, Florida

University of West Florida, Government Documents Department, Pensacola, Florida

Florida State University, Documents Department, Tallahassee, Florida

5. Comments on the NOI. In addition to input received at the scoping meetings, Federal and State agencies, local governments, and other interested parties are requested to send their written comments on the scope of the DEIS, significant issues to be addressed, and alternatives that should be considered to the contact person and address listed above. Comments should be enclosed in an envelope labeled ''Comments on the NOI to Prepare a DEIS for the Destin Dome DPP'' and should be submitted no later than 45 days after publication of the NOI in the **Federal Register.**

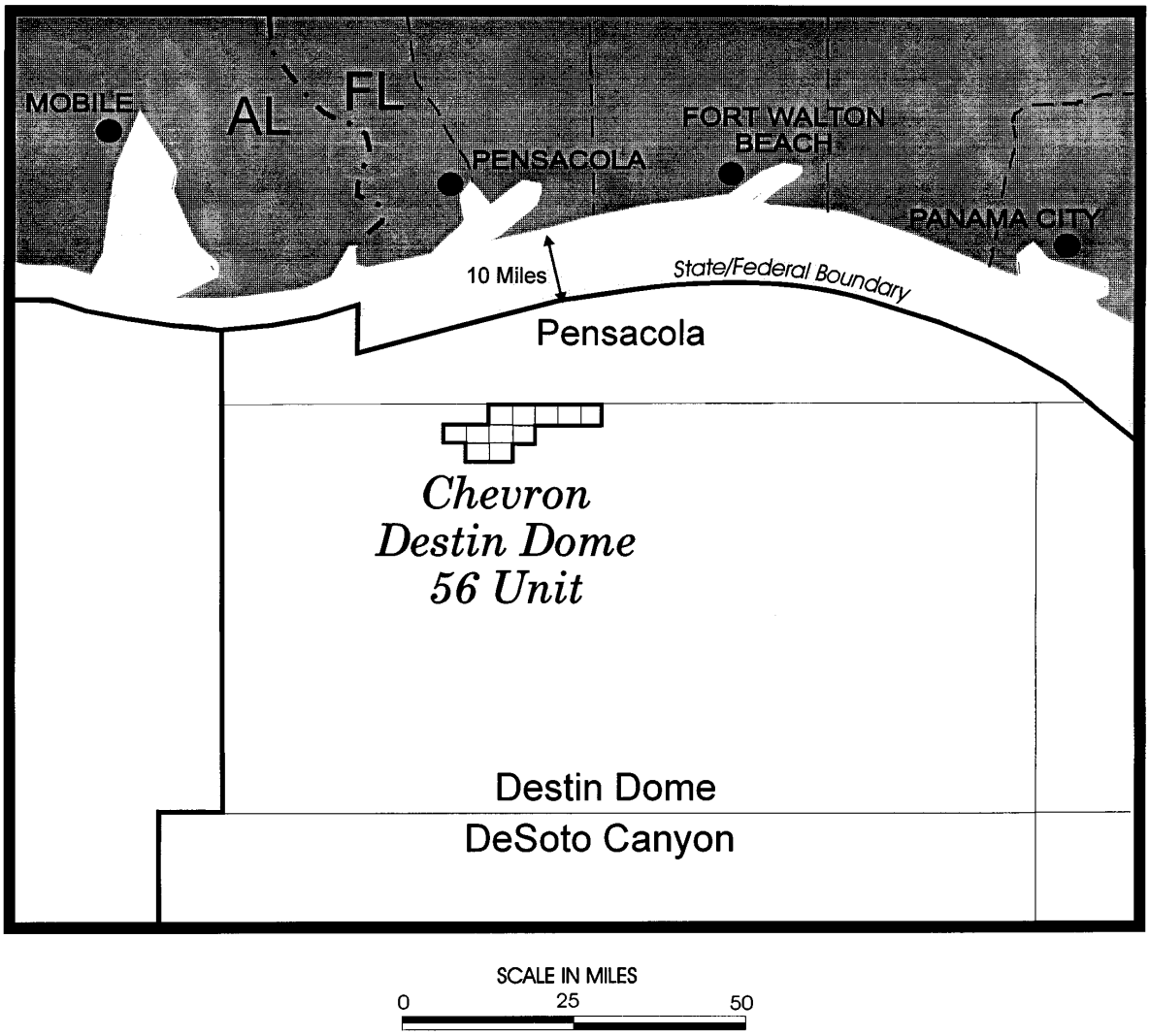
Dated: August 13, 1997.

**J. Hammond Eve,**

*Acting Regional Director, Gulf of Mexico OCS Region.*

**BILLING CODE 4310–MR–M**

# Chevron's Proposed Natural Gas Development Plan

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MMS U.S. Department of the Interior
Minerals Management Service
Gulf of Mexico OCS Region

[FR Doc. 97–22311 Filed 8–21–97; 8:45 am]
BILLING CODE 4310–MR–C

## DEPARTMENT OF THE INTERIOR

## Bureau of Reclamation

## Reclamation Information Collection Activities: Request for Comments

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Bureau of Reclamation (Reclamation), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections as required under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Currently Reclamation is soliciting comments about obtaining data for use in the preparation of a report to the President and the Congress on the status of agency implementation of customer service standards as directed by Executive Order 12862.

**DATES:** Written comments must be submitted to the office listed in the addresses section on or before October 21, 1997.

**ADDRESSES:** Direct comments on the collection of information to the Bureau of Reclamation, Director, Program Analysis Office, D–5200, Attention: Mr. Gene Munson, P.O. Box 25007, Denver, Colorado 80225–0007.

**FOR FURTHER INFORMATION CONTACT:** For additional information or a copy of the proposed collection of information, contact Mr. Munson at the address under the addresses section of this notice or by telephone at: (303) 236–1061, extension 297.

**SUPPLEMENTARY INFORMATION:** Reclamation is prepared to collect Reclamation-wide customer service information in support of Executive Order 12862, and the Government Performance and Results Act of 1993 (GPRA) requirements, and in pursuit of Reclamation's mission to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American people. Collection of Reclamation-wide customer service information furthers our bureau's ability to accomplish 3 essential mission objectives, which are driven by 16 strategies identified in our multi-year GPRA-based strategic plan. As part of the Business Practices and Productivity Mission Objective, the Improve Customer Service strategy ensures that the highest quality services are delivered and met through systematically obtaining feedback from our customers.

The fiscal year 1998 data collection is the first assessment and will establish a baseline of capabilities. The baseline data will be used by Reclamation and its region and area offices to increase service to customers. The initial assessment is the beginning of a cyclical process in which similar assessments will occur in support of required GPRA cycles, identifying improvements over time. The data will enable Reclamation to gauge its business practices in the areas of Reclamation administration and management of its natural resources; contractual arrangements, overhead cost containment, and revenues management; and maintain a standard of quality for service delivery systems. Once the baseline is established, Reclamation will benchmark its business practices against the best in the business and recommendations will be issued for further reengineering of service delivery systems.

### Collection of Information

*Title:* Reclamation-wide Customer Satisfaction Survey.

*Type of Review:* New.

*Abstract:* Reclamation is prepared to collect Reclamation-wide customer service information in support of Executive Order 12862 and the GPRA requirements, and in pursuit of Reclamation's mission. Collection of this information will further

Reclamation's ability to establish baseline data for use by Reclamation and its region and area offices to ensure compliance with GPRA and its strategic planning goals as applied to our customers. Additionally, Reclamation will benchmark the collected data against best business practices in future years to further reengineer Reclamation's service delivery systems.

*Affected Public:* This information collection will affect individuals or households, businesses or others for-profit, not for profit institutions, farms, and State, local or tribal governments in the 17 Western United States who receive Reclamation services.

*Freqency:* Two times.

*Average Time per Response:* 15 minutes.

*Estimated Number of Respondents:* 5,000.

*Estimated Burden Hours:* 2,500.

Written comments are solicited to; (1) Evaluate whether the proposed data collection is necessary for the proper performance of Reclamation, including whether the information will have practical utility; (2) evaluate the accuracy the Reclamation's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and, (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology.

Dated: August 18, 1997.

**Eluid L. Martinez,**

*Commissioner.*

[FR Doc. 97–22358 Filed 8–21–97; 8:45 am]

BILLING CODE 4310–94–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

August 19, 1997.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5096 ext. 143) or by E-Mail to OMalley-Theresa@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday–Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), on or before September 22, 1997.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Employment Standards Administration.

*Title:* Application for Certificate to Employ Homeworkers and the Homeworker Handbook.

*OMB Number:* 1215–0013 (extension).

*Agency Number:* WH–46, WH–75.

*Frequency:* On occasion.

*Affected Public:* Individuals or households; Business or other for-profit; Not-for-profit institutions.

*Number of Respondents:* 14,175.

*Estimated Time Per Respondent:* 30 minutes each (WH–46 and WH–75).

*Total Burden Hours:* 28,916.

*Total Annualized capital/startup costs:* 0.

*Total annual costs (operating/maintaining systems or purchasing services):* $13.30.

*Description:* An employer must file an application, Form WH–46, to obtain a certificate to be permitted to employ homeworkers in the restricted industries (knitted outwear, women's apparel, jewelry manufacturing, gloves and mittens, button and buckle manufacturing, handkerchief manufacturing and embroideries). It provides a means of identifying employers of homeworkers. Employers must obtain a separate handbook, WH–75, for each of their employed homeworkers for recordkeeping purposes to ensure employer obligations to obtain accurate hours worked in order to pay homeworkers in compliance with the Fair Labor Standards Act.

**Theresa M. O'Malley,**

*Departmental Clearance Officer.*

[FR Doc. 97–22387 Filed 8–21–97; 8:45 am]

BILLING CODE 4510–27–M

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## DEPARTMENT OF LABOR

### Employment Standards Administration

### Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S–3014, Washington, DC 20210.

### Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

New Jersey
- NJ 970002 (Feb. 14, 1997)
- NJ 970003 (Feb. 14, 1997)
- NJ 970004 (Feb. 14, 1997)

New York
- NY970002 (Feb. 14, 1997)
- NY970003 (Feb. 14, 1997)
- NY970004 (Feb. 14, 1997)
- NY970005 (Feb. 14, 1997)
- NY970008 (Feb. 14, 1997)
- NY970010 (Feb. 14, 1997)
- NY970011 (Feb. 14, 1997)
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- NY970019 (Feb. 14, 1997)
- NY970020 (Feb. 14, 1997)
- NY970021 (Feb. 14, 1997)
- NY970025 (Feb. 14, 1997)
- NY970026 (Feb. 14, 1997)
- NY970032 (Feb. 14, 1997)
- NY970033 (Feb. 14, 1997)
- NY970034 (Feb. 14, 1997)
- NY970036 (Feb. 14, 1997)
- NY970038 (Feb. 14, 1997)
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- NY970041 (Feb. 14, 1997)
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- NY970044 (Feb. 14, 1997)
- NY970045 (Feb. 14, 1997)
- NY970046 (Feb. 14, 1997)
- NY970047 (Feb. 14, 1997)
- NY970048 (Feb. 14, 1997)
- NY970049 (Feb. 14, 1997)
- NY970060 (Feb. 14, 1997)
- NY970072 (Feb. 14, 1997)
- NY970074 (Feb. 14, 1997)

NY970075 (Feb. 14, 1997)
NY970077 (Feb. 14, 1997)

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## General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 15th day of August 1997.

**Carl J. Poleskey,**

*Chief, Branch of Construction Wage Determinations.*

[FR Doc. 97–22023 Filed 8–21–97; 8:45 am]

BILLING CODE 4510–27–M

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## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

**[Docket No. M–97–88–C]**

### Petition for Modification; Eastern Associated Coal Corporation

Eastern Associated Coal Corporation, P.O. Box 1233, Charleston, West Virginia 25324 has filed a petition to modify the application of 30 CFR 75.380(g) (escapeways; bituminous and lignite mines) to its Federal No. 2 Mine (I.D. No. 46–01456) located in Monogalia County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows.

1. The petition concerns the requirement that the primary escapeway shall be separated from belt and trolley haulage entries for its entire length.

2. As an alternate method, petitioner proposes to change the longwall panel development to a three-entry system, using trolley wire in the same entry as the intake escapeway.

3. In support of this request, petitioner states:

(a) Air lock doors will be installed at the mouth of the section to separate the main track air from the section track air.

(b) The track entry inby the airlock doors will be ventilated using intake air that will be introduced at the mouth of the section. This entry will be used as the primary escapeway off the section to the airlock doors at which point it will become a separate intake escapeway again.

(c) The return entry on the section will be used as a secondary escapeway to the mouth of the section. While this entry is a section return, lifeline will be maintained.

(d) A person, with mine phone communication will be stationed at a location between airlock doors at all times when other employees are inby the airlock doors. This person will be able to disconnect DC power to the section inby the airlock doors immediately. DC power also will be disconnected when not in use.

(e) A parallel ground will be installed and maintained inby the airlock doors; trolley surveys will be conducted on a monthly basis; rail traffic entering the section inby the airlock doors will be provided additional firefighting materials; and trolley wire repair tools will be supplied.

(f) A 62-inch clearance between the track and trolley wire will be maintained inby the airlock. Double insulated bells will be used for installing trolley wire. CO monitors will be installed in the track at 1,000 foot intervals and automatic water sprays will be installed on the beltline.

(g) Visual and audible warning devices will be installed at the end of the supply track to alert miners when the trolley is energized. The audible device will be used only when the trolley is initially energized and will drop off in no less than five seconds after the power is established.

(h) If welding is necessary to bond track, the workers will be removed from inby the affected airsplit until welding is completed.

(i) The section attendant will be trained to open a belt insolation door which will reverse airflow on the belt in the inby direction, in the event that smoke enters the track entry inby the airlock doors, thus providing a separate and isolated intake split of air to the face.

(j) Section self-rescuers will be maintained in the belt entry, outby the section dumping point.

4. Petitioner states that the proposed alternate method will assure no less protection to the miners than under 30 CFR 75.380(g).

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in this office on or before September 22, 1997. Copies of this petition are available for inspection at that address.

Dated: August 18, 1997.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 97–22344 Filed 8–21–97; 8:45 am]

BILLING CODE 4510–43–P

## DEPARTMENT OF LABOR

## Mine Safety and Health Administration

## Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

**1. Tanoma Mining Company**

[Docket No. M–97–82–C]

Tanoma Mining Company, 1809 Chestnut Avenue, P.O. Box 25, Barnesboro, Pennsylvania 15714 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Tanoma Mine (I.D. No. 36–06967) located in Indiana County, Pennsylvania. The petitioner proposes to plug and mine through oil and gas wells. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**2. Eastern Associated Coal Corp.**

[Docket No. M–97–83–C]

Eastern Associated Coal Corp., P.O. Box 1233, Charleston, West Virginia 25324 has filed a petition to modify the application of 30 CFR 75.352 (return air courses) to its Harris No. 1/Rocklick Coal Handling Facility (I.D. No. 46–08610) located in Boone County, West Virginia. The petitioner proposes to develop a coal handling facility (tunnel) between two (2) existing preparation plants; Harris Preparation Plant, MSHA 46–03135, WVDEP 0–72–82, and the Rocklick Preparation Plant, MSHA 46–06448, WVDEP 0–5091–86. The coal handling facility would be developed by excavation of a coal seam 24–36 inches in thickness and by excavating 48–60 inches of rock, with the length of the tunnel at approximately 10,700 feet. The excavation would only be for a short term project, and the projected construction life twelve (12) to eighteen (18) months, with no coal removal other than the projected entries, which would serve only as a coal handling facility and not to produce coal. The petitioner proposes to mine with a two-entry system with the conveyor haulageway being located in the return air course as only one entry is required to facilitate the coal handling facility conveyor belt. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in the belt entry and primary escapeway of all two-entry development. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**3. Turris Coal Company**

[Docket No. M–97–84–C]

Turris Coal Company, P.O. Box 21, Elkhart, Illinois 62634 has filed a petition to modify the application of 30 CFR 75.350 (air course and belt haulage entries) to its Elkhart Mine (I.D. No. 11–02664) located in Logan County, Illinois. The petitioner proposes to use intake air coming from belt haulage entries to ventilate workings. The petitioner proposes to install a carbon monoxide monitoring system as an early warning system along belt haulage entries. The petitioner asserts that its ability to meet regulatory volume and control requirements at the working face will be enhanced by the approval of this requested modification.

**4. H & H Enterprises, Inc.**

[Docket No. M–97–85–C]

H & H Enterprises, Inc., P.O. Box 35, Brownsville, Pennsylvania 15417 has filed a petition to modify the application of 30 CFR 75.1103–4 (automatic fire sensor and warning device system; installation; minimum requirements) to its Meadow Run Mine (I.D. No. 36–07987) located in Green County, Pennsylvania. The petitioner proposes to use a CO monitoring system instead of the existing point-type heat sensors. The petitioner proposes to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries where the system identifies the belt flight; to locate the monitoring devices so that the air is monitored at each belt drive and tailpiece, and at intervals not to exceed 1,000 feet along each conveyor belt entry, except as provided in Item No. 1(c) and Item No. 10 of this petition; and to submit proposed revisions of its approved part 48 training plan to the District Manager that would include initial and refresher training regarding compliance with the conditions in the Proposed Decision and Order. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**5. H & H Enterprises, Inc.**

[Docket No. M–97–86–C]

H & H Enterprises, Inc., P.O. Box 35, Brownsville, Pennsylvania 15417 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Meadow Run Mine (I.D. No. 36–07987) located in Green County, Pennsylvania. The petitioner proposes to use a CO monitoring system instead of the existing point-type heat senors. The petitioner proposes to install a low-level carbon monoxide monitoring system as an early warning fire detection system in all belt entries where the system identifies the belt flight; to locate the monitoring devices so that the air is monitored at each belt drive and tailpiece, and at the intervals not to exceed 1,000 feet along each conveyor belt entry, except as provided in Item No. 1(c) and Item No. 10 of this petition; and to submit proposed revisions of its part 48 training plan to the District Manager that would include initial and refresher training regarding compliance with the conditions specified by the Proposed Decision and Order. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**Request for Comments**

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office

of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 22, 1997. Copies of these petitions are available for inspection at that address.

Dated: August 18, 1997.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 97–22345 Filed 8–21–97; 8:45 am]

BILLING CODE 4510–43–P

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Prohibited Transaction Exemption 97–38; Exemption Application No. D–10398]**

### Grant of Individual Exemptions: Robert A Benz & Co., P.A.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of typographical corrections.

**SUMMARY:** This document contains a notice of typographical correction with respect to a notice of Grant of Individual Exemptions published on July 31, 1997, at 62 FR 41092 (the prior notice).

**CORRECTION:** The prior notice identified Exemption Application No. D–10398, Robert A. Benz & Co., P.A., as Prohibited Transaction Exemption 97–39. The correct Prohibited Transaction number is 97–38.

**FOR FURTHER INFORMATION CONTACT:** Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Signed at Washington, D.C., this 18th day of August, 1997.

**Ivan L. Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 97–22275 Filed 8–21–97; 8:45 am]

BILLING CODE 4510–29–P

## LEGAL SERVICES CORPORATION

### Accounting Guide for LSC Recipients

**AGENCY:** Legal Services Corporation.

**ACTION:** Final accounting guide for recipients.

**SUMMARY:** The Legal Services Corporation (LSC or Corporation) hereby publishes as final the Accounting Guide for LSC Recipients (Accounting Guide), which was adopted by the LSC Board of Directors on July 13, 1997. This Accounting Guide replaces the accounting portions of the 1981 and 1986 editions of LSC Audit and Accounting Guide for Recipients and Auditors (Audit and Accounting Guide) and makes obsolete all previous editions of the Audit and Accounting Guide. The Audit Guide for LSC Recipients and Auditors, issued in 1995 and revised by the LSC Office of Inspector General in 1996, replaced the audit portions of both editions of the Audit and Accounting Guide. Copies of the Accounting Guide may be downloaded from LSC Homepage (WWW.LSC.GOV).

**EFFECTIVE DATE:** The requirements of the Accounting Guide are effective for recipients and subrecipients of LSC grant and contracts as of August 14, 1997.

**FOR FURTHER INFORMATION CONTRACT:** Charles Crittenden, Office of Program Operations, Legal Services Corporation, 750 First St., NE, 10th Floor, Washington, D.C. 20002–4250. (Telephone 202.336.8800; Fax 202.336.8854; E-Mail Crittenc@SMTP.LSC.GOV)

**SUPPLEMENTARY INFORMATION:** In addition to assisting recipients and their auditors in understanding the accounting and reporting requirements for contracts and grants entered into with the LSC, the Accounting Guide revises and updates LSC accounting and financial reporting requirements and guidelines based on recently promulgated Generally Accepted Accounting Principles (GAAP) that apply to not-for-profit organizations. Using these new standards, the Accounting Guide describes the accounting policies, guidelines, records, and internal control procedures that LSC considers adequate to provide proper accounting, financial reporting, and management of LSC funds.

Additionally, the Accounting Guide provides in individual appendices: (1) illustrative financial statement formats acceptable to LSC; (2) descriptions of recommended accounting records; (3) a sample chart of accounts; (4) accounting for property; (5) accounting for client trust funds; (6) other regulatory requirements for not-for-profit organizations; (7) a checklist of accounting and internal control procedures; (8) Corporation regulations setting accounting policies; and (9) a glossary of terms.

Dated: August 19, 1997.

**John A. Tull,**

*Director.*

[FR Doc. 97–22404 Filed 8–21–97; 8:45 am]

BILLING CODE 7050–01–P

## LEGAL SERVICES CORPORATION

### 1997 Interim Grant Agreement to Recipient for Funds To Provide Civil Legal Services to Eligible Low-Income Clients in Blair County, Pennsylvania

**AGENCY:** Legal Services Corporation.

**ACTION:** Announcement of 1997 Interim Grant Agreements.

**SUMMARY:** The Legal Services Corporation (LSC or Corporation) hereby announces its intention to award an interim contract to provide economical and effective delivery of high quality civil legal services to eligible low-income clients in service area PA–16 for Blair County, Pennsylvania. The anticipated grant term is July 1, 1997 through December 31, 1997. The tentative grant amount is $69,812.

**DATES:** All comments and recommendations must be received on or before the close of business on September 22, 1997.

**ADDRESSES:** Legal Services Corporation—Competitive Grants, 750 First Street NE., 10th Floor, Washington, DC 20002–4250.

**FOR FURTHER INFORMATION CONTACT:** Merceria Ludgood, Deputy Director, Office of Program Operations, (202) 336–8848.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 1007(f) of the LSC Act, with a request for comments and recommendations within a period of thirty (30) days from the date of publication, LSC will award funds to the following organization to provide civil legal services in the indicated service area.

| Service area | Applicant name |
|---|---|
| PA–16 ..... | Southern Alleghenys Legal Aid, Inc. |

Date issued: August 13, 1997.

**John A. Tull,**

*Director, Office of Program Operations.*

[FR Doc. 97–22491 Filed 8–21–97; 8:45 am]

BILLING CODE 7050–01–P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Nixon Presidential Historical Materials; Opening of Materials

**AGENCY:** National Archives and Records Administration.

**ACTION:** Notice of opening of materials.

**SUMMARY:** This notice announces the opening of additional Nixon presidential historical materials. Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act (''PRMPA'', 44 U.S.C. 2111 note) and 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR part 1275), and with the agreement of the Nixon estate, the agency has prepared for public access three conversation segments from the Nixon White House tapes and corresponding transcripts. These segments were identified and the transcripts prepared in connection with a special request for records concerning prisoners of war and military personnel missing in action (POW/MIA's).

**DATES:** The National Archives and Records Administration (NARA) intends to make the three conversation segments and corresponding transcripts from the Nixon White House tapes described in this notice available to the public beginning September 29, 1997. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege, or defense before September 22, 1997.

**ADDRESSES:** The materials will be made available to the public at the National Archives at College Park research room, located at 8601 Adelphi Road, College Park, Maryland.

Petitions asserting a legal or constitutional right or privilege which would prevent or limit access must be sent to the Archivist of the United States, National Archives at College Park, 8601 Adelphi Road, College Park, Maryland 20740–6001.

**FOR FURTHER INFORMATION CONTACT:** Karl Weissenbach, Acting Director, Nixon Presidential Materials Staff, 301–713–6950.

**SUPPLEMENTARY INFORMATION:** NARA is proposing to open three 1973 conversation segments and corresponding transcripts from the Nixon White House tapes pertaining to the issue of POW/MIAs. Two conversations were recorded on March 22, 1973, and one was recorded on April 11, 1973. These segments total approximately 41 minutes of listening time. The transcripts prepared by NARA are as accurate as possible given the condition of the original tape records, but NARA cannot certify as to their accuracy.

The tape recordings and transcripts will be made available to the general public in the research room at 8601 Adelphi Road, College Park, MD, Monday through Friday between 8:45 a.m. and 4:30 p.m. Researchers must have a NARA researcher card, which they may obtain when they arrive at the facility. Listening stations will be available for public use on a first come, first served basis. NARA reserves the right to limit listening time in response to heavy demand. No copies of the tape recordings will be sold or otherwise provided at this time. No sound recording devices will be allowed in the listening area. Researchers may take notes. Copies of the transcripts will be available for a fee in accordance with 36 CFR 1258.12.

Dated: August 20, 1997.

**John W. Carlin,**

*Archivist of the United States.*

[FR Doc. 97–22546 Filed 8–21–97; 8:45 am]

BILLING CODE 7515–01–U

## NATIONAL INSTITUTE FOR LITERACY

### Notice of Meeting

**AGENCY:** National Institute for Literacy Advisory Board, National Institute for Literacy.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Institute for Literacy Advisory Board (Board). This notice also describes the function of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

**DATE AND TIME:** September 8, 1997, 1:00 PM to 5:00 PM, and September 9, 1997, 9:00 AM to 1:00 PM.

**ADDRESSES:** National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Sara Pendleton, National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006. Telephone (202) 632–1507.

**SUPPLEMENTARY INFORMATION:** The Board is established under Section 384 of the Adult Education Act, as amended by Title I of Public Law 102–73, the National Literacy Act of 1991. The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute. Specifically, the Board performs the following functions (a) makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and Director of the Institute. In addition, the Institute consults with the Board on the award of fellowships. The Board will meet in Washington, DC on September 8, 1997 from 1:00 PM to 5:00 PM, and September 9, 1997 from 9:00 AM to 1:00 PM. The meeting of the Board is open to the public. The agenda will include the discussion of the status and future directions of the NIFL's major projects, and the Board's involvement. Records are kept of all Board proceedings and are available for public inspection at the National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006 from 8:30 AM to 5:00 PM.

Dated: August 14, 1997.

**Andrew J. Hartman,**

*Director, NIFL.*

[FR Doc. 97–22299 Filed 8–21–97; 8:45 am]

BILLING CODE 6055–01–M

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby

informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:*

NRC Form 171, ''Paper to Paper Duplication Request''.

NRC Form 171A, ''Multi-Media Duplication Request''.

NRC Form 171B, ''Microform to Paper Request''.

3. *The form number if applicable:* NRC Form(s) 171, 171A, and 171B.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* Individuals or companies requesting document duplication.

6. *An estimate of the number of responses:* 18,300.

7. *The estimated number of annual respondents:* 18,300.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,208 hours (18,300 forms x .066 hr/form) or about 4 minutes per form.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* These forms are utilized by individual members of the public to request reproduction of publicly available documents in NRC's Headquarters Public Document Room (PDR). Copies of the form are utilized by the reproduction contractor to accompany the orders and are then discarded.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library) NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by September 22, 1997: Norma Gonzales, Office of Information and Regulatory Affairs (3150–0066), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 18th day of August 1997.

For the Nuclear Regulatory Commission.

**Arnold E. Levin,**

*Acting Designated Senior Official for Information Resources Management.*

[FR Doc. 97–22326 Filed 8–21–97; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Appointments to Recertification Performance Review Boards for the Senior Executive Service

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Appointment to recertification performance review boards for the senior executive service.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has announced the following appointments to NRC Recertification Performance Review Boards.

The following individuals are appointed as members of the NRC Recertification Performance Review Board (PRB) responsible for making recommendations to the appointing and awarding authorities on recertification for Senior Executives:

**New Appointees**

Patricia G. Norry, Deputy Executive Director for Management Services, Chair

Karen D. Cyr, General Counsel

Luis A. Reyes, Regional Administrator, Region II

The following individuals are appointed as members of the NRC Recertification PRB Panel responsible for making recommendations to the appointing and awarding authorities on recertification of Recertification PRB members:

**New Appointees**

Jesse L. Funches, Chief Financial Officer, Chair

Martin J. Virgilio, Executive Assistant and Director, Office of the Chairman

Hugh L. Thompson, Jr., Deputy Executive Director for Regulatory Programs.

All appointments are made pursuant to Section 4314 of Chapter 43 of Title 5 of the United States Code.

**EFFECTIVE DATE:** August 22, 1997.

**FOR FURTHER INFORMATION CONTACT:** Carolyn J. Swanson, Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (301) 415–7103.

Dated at Rockville, Maryland, this 6th day of August 1997.

For the U.S. Nuclear Regulatory Commission.

**Carolyn J. Swanson,**

*Secretary, Executive Resources Board.*

[FR Doc. 97–22325 Filed 8–21–97; 8:45 am]

BILLING CODE 7590–01–M

## OFFICE OF MANAGEMENT AND BUDGET

### Cumulative Report on Rescissions and Deferrals

August 1, 1997.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of August 1, 1997, of ten rescission proposals and seven deferrals contained in three special messages for FY 1997. These messages were transmitted to Congress on December 4, 1996, and on February 10 and March 19, 1997.

**Rescissions (Attachments A and C)**

As of August 1, 1997, ten rescission proposals totaling $407 million had been transmitted to the Congress. Congress approved six of the Administration's rescission proposals, totaling $285 million, in P.L. 105–18. Attachment C shows the status of the FY 1997 rescission proposals.

**Deferrals (Attachments B and D)**

As of August 1, 1997, $914 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1997.

**Information from Special Messages**

The special messages containing information on the rescission proposals and deferrals that are covered by this

cumulative report is printed in the editions of the **Federal Register** cited below:

61 FR 66172, Monday, December 16, 1996

62 FR 8045, Friday, February 21, 1997

62 FR 14478, Wednesday, March 26, 1997

**Franklin D. Raines,**

*Director.*

BILLING CODE 3110–01–P

## ATTACHMENT A
## STATUS OF FY 1997 RESCISSIONS
(in millions of dollars)

| | Budgetary Resources |
|---|---|
| Rescissions proposed by the President | 407.1 |
| Rejected by the Congress | -122.0 |
| Amounts rescinded by P.L. 105-18 | -285.1 |
| Currently before the Congress | --- |

## ATTACHMENT B
## STATUS OF FY 1997 DEFERRALS
(in millions of dollars)

| | Budgetary Resources |
|---|---|
| Deferrals proposed by the President | 3,544.3 |
| Routine Executive releases through August 1, 1997 | -2,630.6 |
| (OMB/Agency releases of $2,630.6 million.) | |
| Overturned by the Congress | --- |
| Currently before the Congress | 913.7 |

# ATTACHMENT C

**Status of FY 1997 Rescission Proposals - As of August 1, 1997**
**(Amounts in thousands of dollars)**

| Agency/Bureau/Account | Rescission Number | Amounts Pending Before Congress: Less than 45 days | Amounts Pending Before Congress: More than 45 days | Date of Message | Previously Withheld and Made Available | Date Made Available | Amount Rescinded | Congressional Action |
|---|---|---|---|---|---|---|---|---|
| **DEPARTMENT OF AGRICULTURE** | | | | | | | | |
| Foreign Agricultural Service | | | | | | | | |
| P.L. 480 grants -- Titles I (OFD), II, and III..... | R97-1 | | 3,500 | 2-10-97 | 3,500 | 4-30-97 | | |
| P.L. 480 program account..... | R97-2 | | 46,500 | 2-10-97 | 46,500 | 4-30-97 | | |
| **DEPARTMENT OF DEFENSE - MILITARY** | | | | | | | | |
| Operation and Maintenance | | | | | | | | |
| Operation and maintenance, Defense-wide..... | R97-4 | | 10,000 | 2-10-97 | 10,000 | 4-28-97 | | |
| Procurement | | | | | | | | |
| National Guard and Reserve equipment..... | R97-5 | | 62,000 | 2-10-97 | 62,000 | 4-28-97 | | |
| **DEPARTMENT OF ENERGY** | | | | | | | | |
| Energy Programs | | | | | | | | |
| Strategic petroleum reserve..... | R97-6 | | 11,000 | 2-10-97 | 11,000 | 4-28-97 | 11,000 | P.L. 105-18 |
| Clean coal technology..... | R97-11 | | 10,000 | 3-19-97 | | 6-12-97 | 10,000 | P.L. 105-18 |
| Power Marketing Administrations | | | | | | | | |
| Construction, rehabilitation, operation and maintenance, Western Area Power Administration..... | R97-7 | | 2,111 | 2-10-97 | 2,111 | 4-28-97 | 2,111 | P.L. 105-18 |

## ATTACHMENT C

**Status of FY 1997 Rescission Proposals - As of August 1, 1997**
**(Amounts in thousands of dollars)**

| Agency/Bureau/Account | Rescission Number | Amounts Pending Before Congress: Less than 45 days | Amounts Pending Before Congress: More than 45 days | Date of Message | Previously Withheld and Made Available | Date Made Available | Amount Rescinded | Congressional Action |
|---|---|---|---|---|---|---|---|---|
| **DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT** | | | | | | | | |
| Public and Indian Housing Programs | | | | | | | | |
| Annual contributions for assisted housing..... | R97-8 | | 250,000 1/ | 2-10-97 | 1/ | 6-12-97 | 250,000 | P.L. 105-18 |
| **DEPARTMENT OF JUSTICE** | | | | | | | | |
| General Administration | | | | | | | | |
| Working capital fund..... | R97-9 | | 6,400 | 2-10-97 | * | 6-12-97 | 6,400 | P.L. 105-18 |
| **GENERAL SERVICES ADMINISTRATION** | | | | | | | | |
| General Activities | | | | | | | | |
| Expenses, Presidential transition..... | R97-10 | | 5,600 2/ | 2-10-97 | 2/ | 6-12-97 | 5,600 | P.L. 105-18 |
| **TOTAL RESCISSIONS.....** | | **0** | **407,111** | | **135,111** | | **285,111** | |

1/ Funds are not available for obligation pursuant to section 218 of P.L. 104-208.
2/ Funds are not available for obligation pursuant to 2 USC 102 (note).
* Funds were never withheld from obligation.

ATTACHMENT D
Status of FY 1997 Deferrals - As of August 1, 1997
(Amounts in thousands of dollars)

| Agency/Bureau/Account | Deferral Number | Amounts Transmitted: Original Request | Amounts Transmitted: Subsequent Change (+) | Date of Message | Releases(-): Cumulative OMB/ Agency | Releases(-): Congressionally Required | Congressional Action | Cumulative Adjustments (+) | Amount Deferred as of 8-1-97 |
|---|---|---|---|---|---|---|---|---|---|
| **FUNDS APPROPRIATED TO THE PRESIDENT** | | | | | | | | | |
| International Security Assistance | | | | | | | | | |
| Economic support fund and International Fund for Ireland | D97-1 | 1,258,292 | | 12-4-96 | 1,050,927 | | | | 207,365 |
| Foreign military financing program | D97-2 | 1,412,375 | | 12-4-96 | 1,407,555 | | | | 4,820 |
| Foreign military financing loan program | D97-3 | 60,000 | | 12-4-96 | | | | | 60,000 |
| Foreign military financing direct loan financing account | D97-4 | 540,000 | | 12-4-96 | | | | | 540,000 |
| Agency for International Development | | | | | | | | | |
| International disaster assistance, Executive | D97-5 | 147,800 | | 12-4-96 | 119,166 | | | | 28,634 |
| **DEPARTMENT OF STATE** | | | | | | | | | |
| Other | | | | | | | | | |
| United States emergency refugee and migration assistance fund | D97-6 | 118,486 | | 12-4-96 | 53,000 | | | | 65,486 |
| **SOCIAL SECURITY ADMINISTRATION** | | | | | | | | | |
| Limitation on administrative expenses | D97-7 | 7,365 | | 12-4-96 | | | | | |
| | D97-7A | | 4 | 2-10-97 | | | | | 7,369 |
| **TOTAL, DEFERRALS** | | **3,544,318** | **4** | | **2,630,648** | | | **0** | **913,674** |



08/06/97

[FR Doc. 97–22392 Filed 8–21–97; 8:45 am]
BILLING CODE 3110–01–C

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–26756]**

## Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

August 15, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 8, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

*Cinergy Corporation* (70–9071)

Cinergy Corporation (''Cinergy''), a registered holding company, 139 East Fourth Street, Cincinnati, Ohio 45202, has filed a declaration under sections 6(a), 7, 12(b), 32 and 33 and rules 45 and 53 under the Act.

Cinergy proposes to issue and sell from time to time through December 31, 2002, upon the terms and conditions described below: (1) short-term notes and commercial paper in an aggregate principal amount not to exceed, together with the then-outstanding principal amount of certain other securities issued by Cinergy as described below, $2 billion at any time outstanding; and (2) up to 30 million additional shares of Cinergy common stock, plus certain other shares of common stock authorized, but not issued, under a prior Commission order, discussed below. All Cinergy common stock authorized in this matter may be adjusted to reflect subsequent stock splits.

By orders dated January 11, 1995 and March 12, 1996 (HCAR Nos. 26215 and 26488, respectively) (''Orders''), the Commission authorized Cinergy to issue and sell from time to time through December 31, 1999 short-term notes (including in connection with letter of credit transactions) and commercial paper in an aggregate principal amount at any time outstanding not to exceed $1 billion. The Commission authorized Cinergy to apply the net proceeds to various corporate purposes including investments in exempt wholesale generators (''EWGs'') and foreign utility companies (''FUCOs''), as those terms are defined respectively in sections 32 and 33 of the Act, together with indirect investments through one or more special-purpose subsidiaries (''Project Parents'' and, together with EWGs and FUCOs, ''Exempt Entities''), provided that Cinergy's ''aggregate investment'' did not exceed 50% of Cinergy's ''consolidated retained earnings,'' each as defined in rule 53(a)(1) under the Act (''50% Investment Limitation''). At May 31, 1997 Cinergy had issued and outstanding a total of $524 million in short-term notes and commercial paper, consisting entirely of notes evidencing short-term bank loans. Cinergy proposes that the Orders be superseded by the proposed transactions effective immediately upon the date of the Commission's order in this filing.

By order dated May 30, 1997 (HCAR No. 26723) (''May Order''), the Commission, among other things, authorized Cinergy from time to time through December 31, 2002, subject to the $1 billion debt limitation prescribed in the Orders, to guarantee the debt or other obligations of various existing subsidiaries and of companies whose securities Cinergy or any of its subsidiaries acquires under rule 58 under the Act. At July 1, 1997, Cinergy had issued $5 million in guarantees under the May Order.

By order dated November 18, 1994 (HCAR No. 26159) (''November Order''), the Commission authorized Cinergy to issue and sell up to eight million shares of its common stock, $.01 par value per share (''Common Stock''), from time to time through December 31, 1995: (1) Through solicitation of proposals from underwriters or dealers; (2) through underwriters or dealers on a negotiated basis; (3) directly to a limited number of purchasers or to a single purchaser; and/or (4) through agents on a negotiated basis. Under the November Order, on December 19, 1994 Cinergy publicly issued and sold 7.089 million shares of Common Stock and contributed the net proceeds thereof to the equity capital of Cinergy's utility subsidiary, PSI Energy, Inc. By supplemental order dated February 23, 1996 (HCAR No. 26477) (''February Order''), the Commission authorized Cinergy to issue and sell the remaining shares of Common Stock (''Remaining Shares''). In addition, Cinergy was authorized to issue some or all of the Remaining Shares to Cinergy system employees, including officer employees, as awards. The February Order authorized Cinergy to apply the proceeds from the sales of the Remaining Shares to various corporate purposes including investments in EWGs and FUCOs, subject to the 50% Investment Limitation. Of the eight million shares originally authorized for issuance under the November Order, there was a balance of 867,385 Remaining Shares at July 1, 1997.

Cinergy has pending a proposal docketed in S.E.C. File No. 70–8993 (HCAR No. 26714; May 2, 1997) to issue and sell from time to time through December 31, 2002 unsecured debt securities in one or more series bearing maturities from two to 40 years (''Debentures'') in an aggregate principal amount not to exceed $400 million at any time outstanding, subject to the $1 billion debt limitation contained in the Orders. Net proceeds from the issue and sale of the Debentures would be applied to refinance short-term debt incurred by Cinergy to finance its 1996 acquisition of a 50% ownership interest in Midlands Electricity plc, a U.K. FUCO, and to refinance outstanding Debentures.

Cinergy also has pending a proposal docketed in S.E.C. File No. 70–9011 (HCAR No. 26698; March 28, 1997 (''100% Application'') under which Cinergy seeks to apply the net proceeds of certain financing transactions consisting of those authorized in the May Order, the February Order and the Orders (to be superseded, as to the February Order and the Orders upon issuance of the Commission's order in the instant matter) to investments in Exempt Entities, provided that Cinergy's ''aggregate investment'' will not exceed 100% of Cinergy's ''consolidated retained earnings.''

Regarding the short-term notes, Cinergy proposes to make short-term borrowings from banks or other lending institutions from time to time through December 31, 2002, provided that the aggregate principal amount of such borrowings, together with the aggregate amount of any outstanding commercial paper, short-term notes in connection with letter of credit transactions, guarantees pursuant to the May Order and Debentures issued or sold by

Cinergy, will not exceed $2 billion at any time outstanding (''Debt Cap'').

The borrowings will be evidenced by: (1) Transactional promissory notes to be dated the date of the borrowings and maturing in not more than one year; (2) grid promissory notes evidencing all outstanding borrowings, dated as of the date of the first borrowing, with each borrowing maturing in not more than one year. Any note may or may not be prepayable, in whole or in part, with or without a premium in the event of prepayment. The amount of any premium payable by Cinergy would not exceed an amount equivalent to the present value of the stated interest payable on the note in the event the note had not been prepaid, plus accrued interest to the date of prepayment. Borrowings will be priced at the lender's prevailing rate offered to corporate borrowers of similar credit quality, which will not exceed the greater of: (1) The London Interbank Offered Rate plus 200 basis points; or (2) a negotiated rate which would not exceed the lender's prime rate plus 200 basis points. Cinergy may pay commitment fees based upon the unused portion of a lender's commitment. The fees would not exceed the amount determined by multiplying the unused portion of the lender's commitment by 3/4 of 1%.

In addition to the borrowings, Cinergy requests authority to issue short-term notes, with maturities of no more than one year, in connection with letter of credit transactions providing credit support for Cinergy subsidiary companies other than Exempt Entities. In such a transaction, Cinergy expects to issue an unsecured demand promissory note to the letter of credit bank evidencing Cinergy's reimbursement obligation for drawings under the letter of credit. Each letter of credit would have a stated expiration date not later than one year from the date of issuance. Cinergy would be required to repay on demand amounts drawn under the letter of credit. Interest on unreimbursed amounts would accrue at an annual rate not to exceed the prime rate offered by the letter of credit bank plus 400 basis points. Cinergy may also be required to pay fees aggregating not more than 1% of the face amount of the letter of credit.

Cinergy proposes from time to time through December 31, 2002 to issue and sell commercial paper to one or more dealers, or directly to financial institutions if the resulting cost of money is equal to or less than that available from dealer-placed commercial paper, in an aggregate principal amount, which, together with the aggregate amount of any outstanding short-term notes, guarantees pursuant to the May Order and Debentures issued or sold by Cinergy, will not exceed the Debt Cap.

Cinergy proposes to issue and sell the commercial paper at market rates with varying maturities not to exceed 270 days. The commercial paper will be in the form of book-entry unsecured promissory notes with varying denominations of not less than $25,000 each. Any associated fees will not exceed 1/10 of 1% multiplied by the principal amount of the commercial paper. In commercial paper sales effected on a discount basis, there will be no commission or fee. However, the purchasing dealer will re-offer the commercial paper at a rate less than the rate to Cinergy. The discount rate to dealers will not exceed the maximum discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and the same maturity. The purchasing dealer will re-offer the commercial paper in such a manner as not to constitute a public offering within the meaning of the Securities Act of 1993.

In connection with the proposed issuance and sale of short-term notes to banks and other lending institutions and sales of commercial paper, Cinergy proposes to mitigate interest rate risk through the use of various interest rate management instruments commonly used in today's capital markets, such as interest rate swaps, caps, collars, floors, options, forwards, futures and similar products designed to manage and minimize interest costs. Cinergy expects to enter into these agreements with counterparties that are highly rated financial institutions. The transactions will be for fixed periods and stated notional amounts. Fees, commissions and annual margins in connection with any interest rate management agreements will not exceed 100 basis points in respect of the principal or notional amount of the related short-term notes/commercial paper or interest rate management agreement. In addition, with respect to options, Cinergy may pay an option fee which would not exceed 10% of the principal amount of the short-term note or commercial paper covered by the option.

Finally, Cinergy proposes to issue and sell from time to time through December 31, 2002: (1) Up to 30 million additional shares of Common Stock and (2) the Remaining Shares (collectively, including any adjustments pursuant to subsequent stock splits, the ''Additional Shares''). At May 31, 1997, Cinergy had a total of 600 million shares of Common Stock authorized for issuance, of which 157,679,129 were issued and outstanding. Cinergy proposes to issue and sell the Additional Shares from time to time employing any one or more of the following modes: (1) Through solicitations of proposals from underwriters or dealers; (2) through negotiated transactions with underwriters or dealers; (3) directly to a limited number of purchasers or to a single purchaser; and (4) through agents. The price applicable to Additional Shares sold in any such transaction will be based on several factors, including in particular the current market price of the Common Stock and capital market conditions in general at the time. Total fees and expenses incurred by Cinergy in connection with the issuance and sale of the Additional Shares will not exceed 5% of the total proceeds from the sale of the Additional Shares. In addition, Cinergy requests authority to issue up to 250,000 of the Additional Shares to Cinergy system employees, including officers, in gift or award transactions from time to time through December 31, 2002.

Cinergy proposes to apply net proceeds from the issue and sale of the short-term notes, commercial paper and Additional Shares to investments in other Cinergy system companies, to exempt acquisitions of securities of energy-related companies pursuant to rule 58, to repay, repurchase or refinance outstanding securities of Cinergy, to make loans to participating companies in the Cinergy system money pool, to investments in Exempt Entities, subject to the 50% Investment Limitation pending receipt of the authorization requested in the 100% Application, and to other lawful corporate purposes.

*American Electric Power Company, Inc., et al.* (70–9077)

American Electric Power Company, Inc. (''AEP''), a registered holding company, and AEP Resources, Inc. (''Resources''), its wholly owned nonutility subsidiary company, each of 1 Riverside Plaza, Columbus, Ohio 43215, have filed a declaration under section 12(c) of the Act and rules 46 and 54 under the Act.

By order dated December 22, 1994 (HCAR No. 26200), AEP was authorized through December 31, 2000, among other things, to form direct and indirect special purpose subsidiaries (''Project Parents'') to acquire and own or operate ''exempt wholesale generators'' and ''foreign utility companies'' (''FUCOs''), as defined in sections 32 and 33 of the Act, respectively.

Applicants propose that their Project Parents declare and pay dividends to

their parent companies from time to time through December 31, 2002 out of capital or earned surplus to the extent permitted under applicable corporate law. AEP and Resources request this authorization on behalf of: (i) Certain existing Project Parents formed in connection with AEP's 1997 acquisition of a 50% ownership interest in Yorkshire Electricity Group plc, a U.K. regional electricity company and a FUCO (''Yorkshire'');[1] (ii) those Project Parents formed in connection with AEP's 1996 acquisition of a 70% ownership interest in Nanyang General Light Electric Co., Ltd. (''Nanyang''), a cooperative joint venture company formed under the laws of the People's Republic of China, established to own, construct, finance and operate a coal-fired electric generating station in Nanyang, Henan Province, China; and (iii) other existing and all future Project Parents formed after the date of the issuance of an order authorizing this proposal (collectively, ''Applicable Project Parents''). Resources states that it would pay any such dividend only to the extent that the dividend is based upon: (i) A corresponding dividend or dividends our of capital or unearned surplus from an Applicable Project Parent that is a direct subsidiary of Resources or (ii) otherwise is based upon Resources' direct or indirect ownership of an Exempt Project.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–22292 Filed 8–21–97; 8:45 am]

BILLING CODE 8010–01–M

[1] Namely, Yorkshire Power Group Limited (''Yorkshire Power Group''), a U.K. company in which Resources and a subsidiary of Public Service Company of Colorado have respective 50% ownership interests, and Yorkshire Holdings plc, the actual owner of Yorkshire and a wholly owned subsidiary of Yorkshire Power Group.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–38940; International Series Release No. 1097; File No. SR–Amex–97–20]**

## Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2, and 3 to Proposed Rule Change by the American Exchange, Inc., Relating to the Listing and Trading of Indexed Term Notes

August 15, 1997.

### I. Introduction

On April 30, 1997, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''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 approve for listing and trading under Section 107A of the Amex Company Guide market index target-term securities (''MITTS''),[3] the return of which is based in whole or in part on changes in the value of the Major 11 International Index (''the Major 11 International Index'').

The proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 38665 (May 21, 1997) 62 FR 28911 (May 28, 1997). No comment letters were received in response to the proposal. The Exchange subsequently filed Amendment Nos. 1, 2, and 3 to the proposed rule change on June 11, 1997,[4] June 30, 1997,[5] and July 17, 1997,[6] respectively. This order

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''MITTS'' and ''Market Index Target-Term Securities'' are service marks of Merrill Lynch & Co., Inc. (''Merrill Lynch'').

[4] Amendment No. 1 states that the Exchange's equity trading rules will apply to the trading of indexed term notes linked to the Major 11 International Index, including Rule 411, which requires members to use due diligence to learn essential facts relative to every customer and to every order or account accepted, and Rule 462, which requires the application of equity margin rules to the trading of indexed term notes. Amendment No. 1 also states that the continued listing guidelines set forth in Sections 1001 through 1003 of the Amex Company Guide will apply to the proposed indexed term notes; that the exchange will, prior to trading the proposed indexed term notes, distribute an Information Circular to members providing guidance with regard to member firm compliance responsibilities, including suitability recommendations, when handling transactions in the indexed term notes, and highlighting their special risks and characteristics; that the Exchange will maintain the Index and it will be the Exchange's responsibility to determine, if necessary, whether to replace a sub-index with a substitute or successor index or undertake to publish the sub-index if it ceases to be published. *See* letter from Claire P. McGrath, Vice-President and Special Counsel, Amex, to Ivette Lopez, Assistant Director, Market Supervision, Commission, dated June 10, 1997 (''Amendment No. 1'').

[5] Amendment No. 2 further clarifies Amendment No. 1 by stating that Section 1003(b) of the *Company Guide* in particular will apply to the proposed indexed term notes. Amendment No. 2 also states that the shares of a sub-index will remain fixed, except in the case of a significant event, such as a split in the value of the sub-index, a change in the method of calculation, or if the sub-index ceases to be published. Amendment No. 2 gives an example of what would happen to the Index calculation if a sub-index were to split in value. Also, if the sub-index ceases to be published, Amex could choose to replace it with a substitute index (another index currently being published that correlates highly with the sub-index being replaced, such as Amex's Japan Index could substitute for the Nikkei 225), a successor index (an index intended by the publisher as a replacement to the original sub-index), or undertake to publish the sub-index using the same procedures last used to calculate the sub-index prior to its discontinuance. In addition, Amendment No. 2 states that if the marketplace for the securities underlying any one of the sub-indices that constitute the Major 11 International Index is closed on any given business day, due to natural disaster or holiday observed in the foreign country, Amex will use the previous closing value in the calculation. *See* letter from Claire P. McGrath, Vice-President and Special Counsel, Derivatives Securities, Amex, to Ivette Lopez, Assistant Director, Market Regulation, Commission, dated June 27, 1997 (''Amendment No. 2'').

[6] Amendment No. 3 states that Amex intends to include a heightened suitability standard in the Information Circular it will distribute to its membership prior to the commencement of trading in Major 11 International Index Notes. The circular will state that before a member, member organization, or employee of such member organization undertakes to recommend a transaction in the security, such member or member organization should make a determination that the security is suitable for such customer and the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that they may be capable of evaluating the risks and the special characteristics of the recommended transaction, including those highlighted, and is financially able to bear the risks of the

Continued

approves the proposed rule change, as amended.

## II. Background and Description

Under Section 107A of the Amex Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[7] The Amex now proposes to list for trading under Section 107A of the Company Guide indexed term notes whose value in whole or in part will be based upon an index consisting of the major market indices of eight European countries, two Asian countries, and Australia (''Major 11 International Index Notes'' or ''Index Notes'').[8]

The Index Notes will be non-convertible debt securities and will conform to the initial listing guidelines under Section 107A of the Company Guide[9] and the continued listing guidelines under Sections 1001 to 1003 of the Company Guide.[10] Although a specific maturity date will not be established until the time of the offering, the Index Notes will provide for maturity within a period of not less than one nor more than ten years from the date of issue. Indexed term notes may provide for payments at maturity based in whole or in part on changes in the value of the index.[11] At maturity, holders of the Major 11 International Index Notes will receive not less than 90% of the initial issue price. The notes will not be callable or redeemable prior to maturity and will be cash settled in U.S. currency.

Consistent with other structured products, the Exchange will distribute a circular to its membership, prior to the commencement of trading, providing guidance with regard to member firm compliance responsibilities, including appropriate suitability criteria and/or guidelines, and highlighting the special risks and characteristics of the proposed Major 11 International Index Notes.[12] The Exchange's equity trading rules will apply to the trading of the indexed term notes linked to the Index, including Rules 411 and 462.[13] Specifically, Rule 411 will impose a duty of due diligence on Amex's members and member firms to learn the essential facts relating to every customer prior to trading Major 11 International Index Notes. In addition, for this particular MITTS product, the Exchange will require members and member firms to make a determination that the proposed index term note is suitable for the customer, and the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation that the customer has the knowledge and experience in financial matters that they may be capable of evaluating the risks and the special characteristics of the recommended transaction, and is financially able to bear the risks of the recommended transaction.[14]

According to Amex, the eleven indices (''sub-indices'' or individually ''sub-index'') that form the Major 11 International Index are comprised of a total of 911 of the largest and most liquid securities from each of the eight European markets, two Asian markets, and the Australian market. Initial weightings will be assigned to each sub-index at the close of trading on the day immediately prior to the listing of the Index Notes and based upon the index's market capitalization. Based on market data as of April 3, 1997, the Nikkei 225 Index (''NKY'') would have an assigned weight of approximately 27.80%; the UK's Financial Times SE 100 Index (''FT–SE 100'') would have an assigned weight of approximately 23.44%; the Deutscher Aktienindex (''DAX'') would have an assigned weight of approximately 8.86%; the Compagnie des Agents de Change 40 Index (''CAC 40'') would have an assigned weight of approximately 7.22%; the Swiss Market Index (''SMI'') would have an assigned weight of approximately 6.29%; the Amsterdam European Options Exchange Index (''AEX'') would have an assigned weight of approximately 5.76%; the Hong Kong 30 Index (''HKX'') would have an assigned weight of approximately 5.15%; the Australian All Ordinaries Index (''AS 30'') would have an assigned weight of approximately 5.94%; the Milano Italia Borsa 30 Index (''MIB 30'') would have an assigned weight of approximately 3.63%; the Stockholm Options Market Index (''OMX'') would have an assigned weight of approximately 3.10%; and the IBEX 35 would have an assigned weight of approximately 2.81%. Amex represents that it has in place surveillance sharing agreements with the appropriate regulatory organizations in each country represented in the Major 11 International Index, except Sweden and Switzerland, which together represented 9.39% of the Major 11 International Index as of April 3, 1997.[15]

The Major 11 International Index will be calculated using a ''capitalization-weighted'' methodology. As noted

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recommended transaction. *See* letter from Claire McGrath, Vice-President and Special Counsel, Amex, to Ivette Lopez, Assistant Director, Market Regulation, Commission, dated July 16, 1997 (''Amendment No. 3'').

[7] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

[8] The Commission has previously approved the listing and trading of MITTS or hybrid securities similar to MITTS based upon portfolios of securities. See e.g., Securities Exchange Act Release Nos. 32840 (September 2, 1993), 58 FR 47485 (September 9, 1993); 33368 (December 22, 1993), 58 FR 68975 (December 29, 1993); 33495 (January 19, 1994), 59 FR 3883 (January 27, 1994); 34692 (September 20, 1994), 59 FR 49267 (September 27, 1994); 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (''Term Notes Approval Orders''). MITTS on the Major 11 International Index Notes differ from these other MITTS products in that the Major 11 International Index is an index of several indices rather than a portfolio of individual securities. See, e.g., Securities Exchange Act Release No. 38819 (July 7, 1997), 62 FR 37320 (July 11, 1997).

[9] Specifically, the notes must have: (1) A minimum distribution of one million trading units; (2) a minimum of 400 holders; (3) an aggregate market value of at least $4 million; and (4) a term of at least one year. Additionally, the issuer of the notes must have assets of at least $100 million, stockholders' equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in tow of the three prior fiscal years. As an alternative to these financial criteria, the issue must have either: (1) Assets in excess of $200 million and stockholders' equity in excess of $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[10] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of the Exchange's Company Guide. Section 1002(b) states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to the continued listing guidelines for distribution of the indexed term notes on the Major 11 International Index, the Exchange will rely, in part, on the guidelines in Section 1003(b), which discuss suspensions and delistings with respect to limited distribution and reduced market value. See Amendment No. 2, supra note 5.

[11] The Commission notes that the terms of the final payout for the Notes have not yet been finalized. However, Amex has stated that it expects an investor to receive the appreciation, if any, of the ending Index value over the starting Index value, plus an additional amount that would be between 10% and 20% of the appreciation amount. In addition, the Commission notes that previously approved MITTS products have had terms that include a cap on the amount of appreciation an investor could receive, while other MITTS products previously approved have been structured so that the investor can receive (in addition to the percentage of principal guaranteed) appreciation, if any, of the ending index value over the starting index value only if the ending index value is more than a certain percentage above the starting index value.

[12] See Amendment Nos. 1 and 2, supra notes 4 and 5.

[13] Rule 411 requires the Exchange's members to use due diligence to learn the essential facts relative to every customer and to every order or account accepted. Rule 462 requires the application of equity margin rules to the trading of indexed term notes. See Amendment No. 1, supra note 4.

[14] See Amendment No. 3, supra note 6.

[15] A description of each of the sub-indices is set forth in detail in the notice release. See Securities Exchange Act Release No. 38665 (May 21, 1997), 62 FR 28911 (May 28, 1997).

above, each sub-index will be given its assigned weighting at the close of trading on the day immediately prior to the listing of the Index Note. The number of shares in each sub-index will be fixed on that day and will equal its weighting in the Major 11 International Index times 100 divided by the sub-index level. There will be no periodic rebalancing of the Major 11 International Index to reflect changes in relative market capitalizations among the sub-indices. The initial sub-index value used in the Major 11 International Index calculation will equal the product of the number of shares in the sub-index times its representative sub-index level. The Major 11 International Index will initially be set to provide a benchmark value of 100.00 at the close of trading on the day preceding the listing of the proposed Index Note. The Exchange will calculate the Major 11 International Index and, similar to other stock index values published by the Exchange, the value of the Major 11 International Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B each trading day until the last individual sub-index ceases updating in its home market. The Exchange will then disseminate the Major 11 International Index based on the closing values for each sub-index.

Because index term notes are generally meant to be a one time issuance, providing investors with a percentage of the appreciation in the index as measured over a specified period of time, and are essentially a passive investment, the Major 11 International Index will not be actively maintained like other derivatively based index products, except as discussed below. The shares for each sub-index will remain fixed during the life of the note, except in the event of a significant action taken by the publisher of the sub-index such as a split of the value of the sub-index or a change in the method of calculation. For example, if the publisher of one of the sub-indices were to split that index, Amex would double the shares represented by that sub-index in the Major 11 International Index.[16] Further, if a sub-index ceases to be published, the Exchange may determine to replace it with a substitute index (another index currently being published that correlates highly with the sub-index being replaced),[17] a successor index (an index intended by the publisher as a replacement to the original sub-index), or may undertake to publish the sub-index using the same procedures last used to calculate the sub-index prior to its discontinuance.[18] For example, Amex states that if the CAC–40 should cease to be published by SBF-Paris Bourse, Amex may undertake to publish a capitalization-weighted index of 40 of the most liquid and highly capitalized stocks traded on the Paris Bourse.[19] Finally, the Commission notes that Amex has sole authority to determine whether to replace a sub-index that has ceased to be published and, if so, the choice of replacement. The issuer of the Major 11 International Index Notes has no role in these determinations.

If the marketplace for the securities underlying any of the sub-indices that constitute the Major 11 International Index is closed on any given business day in the U.S., such as in the event of a market disruption due to a natural disaster or in the more likely event that the marketplace is closed for a holiday celebrated in the foreign country, Amex will use the previous closing value in the calculation of the Major 11 International Index.[20]

## III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[21] Specifically, the Commission believes providing for exchange-trading of Major 11 International Index Notes will offer a new and innovative means of participating in the market for foreign securities. In particular, the Commission believes that the proposed Index Notes will permit investors to gain equity exposure in the component foreign markets while at the same time limiting the downside risk of the original investment as a result of the principal guarantee. Accordingly, for the same reasons discussed below as well as the same reasons as discussed in the Term Notes Approval Orders,[22] the Commission finds that the rule proposal is consistent with the requirements of Section 6(b)(5) of the Act that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, and to protect investors and the public interest.[23]

The Commission notes that the Major 11 International Index Notes are not leveraged instruments; however, their price will still be derived from and based upon the securities in eleven different markets, as reflected by the underlying sub-indices. As noted in the Term Notes Approval Orders, the level of risk involved in the purchase and sale of a MITTS is generally similar to the risk involved in the purchase or sale of traditional common stock, except for the fact that the products are derivatively priced from a portfolio of securities. MITTS on the Major 11 International Index, however, raise an additional level of risk because the final rate of return of the Index Notes is derivatively priced, based upon the performance of a portfolio of eleven different sub-indices, whose performance is also derivatively priced based upon the performance of a portfolio of securities trading in each of these eleven market centers. Accordingly, the Commission has specific concerns regarding this type of product. For the reasons discussed below, the Commission believes Amex's proposal adequately addresses these concerns.

First, the Commission notes that Amex's rules and procedures addressing the special concerns attendant to the trading of hybrid securities will be applicable to the proposed Index Notes. In particular, by imposing the hybrid listing standards, heightened suitability for recommendations in Index Notes, disclosure, and compliance requirements noted above, the Commission believes that the Exchange has adequately addressed the potential problems that could arise from the hybrid nature of the proposed Index Notes. In addition, Amex will distribute a circular to its membership calling attention to the specific risks associated with the Major 11 International Index Notes.[24]

Second, the Major 11 International Index Notes remain a non-leveraged product with the issuer guaranteeing no

[16] See Amendment No. 2, supra note 5.

[17] For example, Amex's Japan Index could be a substitute for the Nikkei 225. See Amendment No. 2, supra note 5.

[18] See Amendment Nos. 1 and 2, supra notes 4 and 5.

[19] See Amendment No. 2, supra note 5. The Commission notes that this replacement process is slightly different from the approach used in other MITTS-like products. For example, under the terms of other previously approved MITTS, when portfolio securities cease to exist during the term of the note due to a merger, acquisition, or similar type corporate transaction, a value equal to the security's final value is assigned to the stock. Further, if a market price is no longer available for an index stock due to circumstances including, but not limited to, liquidation, bankruptcy, insolvency, or any other similar proceeding, then the security is assigned a value of zero for index calculation purposes, rather than replaced.

[20] *See* Amendment No. 2, supra note 5.

[21] 15 U.S.C. 78f(b)(5).

[22] See Term Notes Approval Orders, supra note 7.

[23] 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).

[24] See Amendment No. 1, supra note 4.

less than 90% of principal return. The Commission realizes that the final payout on the Major 11 International Index Notes are dependent in part upon the individual credit of the issuer. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide that only issuers satisfying substantial asset and equity requirements may issue securities such as MITTS. In addition, the Exchange's hydrid listing standards further require that the proposed indexed term notes have at least $4 million in market value.[25] In any event, financial information regarding the issuer, in addition to information on the underlying sub-indices, will be publically available to investors.

Third, each of the sub-indices represent securities from eleven major markets. Both the history and performance of these indices, as well as current pricing trends, should be readily available through a variety of public sources. Further, the Commission notes that although the value of each sub-index should be available, Amex has committed to disseminating the value of the Major 11 International Index on a real time basis at least once every 15 seconds throughout the trading day. As noted above, current values for each individual sub-index will be used, including the value of the Major 11 International Index, for as long as they are available during Amex's trading hours. The Commission believes that this information will be extremely useful and beneficial for investors in the Index Notes.

Fourth, the Commission also has a systematic concern, however, that a broker-dealer or a subsidiary providing a hedge for the issuer will incur position exposure. As discussed in the Term Notes Approval Orders, the Commission believes this concern is minimal given the size of the proposed Index Notes issuance in relation to the net worth of the issuer.[26]

Finally, the Commission also believes that the listing and trading of the proposed Index Notes should not unduly impact the market for the securities underlying the sub-indices or raise manipulative concerns. The Commission notes that all of the sub-indices that make up the Index are established indices.[27] The Commission has previously reviewed or approved nine of the eleven sub-indices, representing 87.95% of the value of the Major 11 International Index as of April 3, 1997,[28] in the context of either warrant trading, options trading, or while issuing non-objection letters to the Commodity Futures Trading Commission (''CFTC'').[29] In these previous reviews, the Commission evaluated each of the individual sub-indices noted above and found that they were broad-based indices comprised of highly capitalized stocks with high trading volumes that were not readily susceptible to manipulation.[30]

Specifically, in the letters to the CFTC, the Commission found that certain of the sub-indices are not readily susceptible to manipulation because of the representative nature of the various industry segments included in the individual index, the relative weighted value of the index's component stocks, and the substantial capitalization and trading volume of the component stocks. In Commission orders previously approving the FT–SE 100 for warrant and reduced-value options trading, the CAC 40 for warrant trading, the DAX for warrant trading, the Nikkei 225 for warrant trading, and the HKO for warrant trading, the Commission made similar findings that the index was a broad-based index of actively traded, well capitalized stocks.[31] Additionally, Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.[32]

The Commission finds good cause to approve Amendment Nos. 1, 2, and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. As noted above, Amendment No. 1 states that the Exchange's equity rules, including the equity margin rule and the suitability rule, will apply to the trading of the proposed Index Notes. Amendment No. 3 adopts heightened suitability standards, as described above, for this particular MITTS product. In addition, Amendment No. 1 clarifies that the Exchange will distribute to its membership, prior to trading the proposed Index Notes, a circular providing guidance with regard to member and member firm compliance responsibilities, including suitability recommendations, when handling transactions in the proposed Index Notes and highlighting their special risks and characteristics.

Amendment No. 1 also states that the continued listing standards set forth in Sections 1001–1003 of the Amex Company Guide will apply to the trading of the proposed Index Notes, and Amendment No. 2 further clarifies this by stating that Section 1003(b), in particular, will apply. Finally, Amendment Nos. 1 and 2, collectively, state that the shares for each sub-index will remain fixed, except in the event of a significant action taken by the publisher, such as a split in the sub-index value, a change in the calculation of the sub-index, or if the sub-index ceases to be published. Amendment No. 2 also provides additional detail on potential changes that can be made to the Index upon certain events, as well as describes how Amex would calculate the Index if a sub-index was closed on any given business day in the U.S., such

[25] See Amex Company Guide § 107A.

[26] *See* Term Notes Approval Orders, supra note 7.

[27] The Commission notes that the Major 11 International Index Notes are not quite equivalent to other MITTS in that the Major 11 International Index is based upon a group of sub-indices, all of which have not been approved by the Commission for trading. The Commission notes that by approving this proposed rule change the Commission is not approving either the Major 11 International Index or the underlying sub-indices for options, warrants, and/or futures trading. The Commission further notes that if the sub-indices that have not been approved were to equal more than 20% of the Major 11 International Index value, the Commission would find it necessary to evaluate those sub-indices like other index products before approving the MITT. The decision to allow a MITTS to be priced partly off of non-approved indices is related to the fact that the Index Notes are a limited issuance, at least 90% principal guaranteed, non-leveraged investment, and that the non-approved indices comprise only 12.05% of the Major 11 International Index value. Any changes in these factors would alter the Commission's determination.

[28] The sub-indices that have been previously reviewed or approved in one of these contexts are the NKY, FT–SE 100, DAX, CAC 40, HKX, AS 30, MIB 30, OMX, and the IBEX 35. The other two sub-indices in the Major 11 International Index are SMI and AEX.

[29] The Commission has issued these non-objection letters relating to the offer and sale to U.S. citizens of futures and/or options on futures on the FT–SE 100, the DAX, the CAC 40, the MIB 30, the OMX, and the IBEX 35. The Commission has issued a non-objection letter relating to the application of the Chicago Mercantile Exchange for designation as a contract market to trade futures on the Nikkei 225 Index.

[30] The Commission notes that in its non-objection letter to the CFTC regarding the Nikkei 225, it found that the Nikkei 225 was not susceptible to manipulation because of the large number of stocks in the index and the representative nature of various industry segments included in the index.

[31] See Securities Exchange Act Release Nos. 27565 (January 4, 1990), 55 FR 376 (Nikkei 225 Warrants); 27769 (March 6, 1990), 55 FR 9380 (March 13, 1990) (FT–SE 100 Warrants); 28544 (October 17, 1990), 55 FR 42792 (October 23, 1990) (CAC 40 Warrants); 28587 (October 30, 1990), 55 FR 46595 (November 5, 1990) (CAC 40 Warrants); 29722 (September 23, 1991), 56 FR 49807 (October 1, 1991) (FT–SE 100 Reduced-Value Index Options); 33036 (October 8, 1993), 58 FR 53588 (October 15, 1993) (HKO Warrants); and 36070 (August 9, 1995), 60 FR 42205 (August 15, 1995) (DAX Warrants).

[32] As noted above, Amex represents that it has in place surveillance sharing agreements with the appropriate regulatory organizations in each country in the Major 11 International Index, except Sweden and Switzerland. These two countries together represented only 9.39% of the Major 11 International Index as of April 3, 1997.

as if a market disruption occurred due to a natural disaster or a foreign holiday.

The Commission believes that Amendment Nos. 1, 2, and 3, as described herein, clarify and strengthen the Exchange's proposal by, among other things, providing the specific continued listing standards that will apply, which should help ensure a minimal level of depth and liquidity for continued trading of the product on Amex, identifying which trading rules will apply to the trading of the Index Notes, and adopting a heightened suitability standard for recommendations covering the Index Notes. Amendment Nos. 1 and 2 also refine the original proposal by specifying in further detail how the Exchange will be responsible for determining any changes in the sub-indices due to a significant event, and Amendment No. 1 clarifies the terms of the Information Circular. Additionally, the Exchange's proposal to list and trade the proposed Index Notes was noticed for the full comment period and no comment letters were received. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment Nos. 1, 2, and 3 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1, 2, and 3 to the rule proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–97–20 and should be submitted by September 12, 1997.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[33] that the proposed rule change (SR–Amex–97–20), including Amendment Nos. 1, 2, and 3 is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–22291 Filed 8–21–97; 8:45 am]

BILLING CODE 8010–01–M

[33] 15 U.S.C. 78s(b)2.

[34] 17 CFR 200.30.3(a)12.

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–38939; File No. SR–CBOE–97–16]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change, and Amendment No. 1 Thereto, Relating to the Trading of FLEX Index Options

August 15, 1997.

On March 13, 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) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules governing the trading of FLEX Index options. On May 13, 1997, the CBOE submitted an amendment to the Commission regarding the proposal.[3] Notice of the proposed rule change, and Amendment No. 1 thereto, appeared in the **Federal Register** on May 22, 1997.[4] No comments were received on the proposal. This order approves the proposal, as amended.

### I. Description of the Proposal

The purpose of the proposed rule change is to make certain changes to the Exchange's rules governing the trading of FLEX Index options. Specifically, those changes involve a reduction in the percentage of a trade to which a Submitting Member indicating an intent to cross is entitled, and the establishment of bid-offer spreads for certain FLEX Index trades.

Since their inception,[5] FLEX Index options have relied on Appointed Market-Makers (''AMMs'') to provide liquidity for FLEX requests for quotes (''RFQs''). AMMs are required, pursuant to CBOE Rule 24A.9(b), to enter a FLEX Quote in response to any RFQ on any FLEX option of the class to which the AMM is appointed.

As an inducement to attract volume that would otherwise be transacted in the over-the-counter market, the Exchange established percentage entitlements for the Exchange member that initiates FLEX bidding and offering by submitting a RFQ (''Submitting Member'') where the Submitting Member has indicated an intention to cross or to act as principal on the trade and has matched or improved the best bid or offer (''BBO''). Generally, with some qualifications, pursuant to CBOE Rule 24A.5, the Submitting Member in a FLEX Index option is entitled to 50% (½) of the trade in the case where the Submitting Member matches the BBO and 66.67% (⅔) of the trade where the Submitting Member improves the BBO.

To the extent Submitting Members accept their entire entitlement on a FLEX Index option trade, half of the trade or less would remain for the other market-makers to share. The Exchange believes, however, that these entitlements have discouraged participation by market-makers in the FLEX Index product. Accordingly, the Exchange has proposed to amend its rules so that the entitlement for Submitting Members would be reduced to the greater of 25% or a proportional share of the trade.[6] This means, for example, that if there are four market-makers participating on the trade in addition to the Submitting Member, then the Submitting Member would be entitled to 25% of the trade because it is greater than the proportional share (⅕) of the trade. However, if there were two market-makers participating on a trade along with a Submitting Member, the Submitting Member would be entitled to a proportional share of the trade, or ⅓. This is different from the current entitlement for Submitting Members in Flex Equity options, under CBOE Rule 24A.5, who are entitled only to 25% of the trade regardless of the number of participants to the trade.[7]

[1] 15 U.S.C. 78s(b)(1) (1988 & Supp. V 1993).

[2] 17 CFR 240.19b–4.

[3] See letter from Timothy H. Thompson, Senior Attorney, CBOE, to Steve Youhn, Division of Market Regulation, Commission, dated May 13, 1997 (''Amendment No. 1'').

[4] See Securities Exchange Act Release No. 38637 (May 14, 1997), 62 FR 28084 (May 22, 1997).

[5] See Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993).

[6] The rule currently provides that the Submitting Member is entitled to the largest of the percentage of the trade (½ or ⅔), $1 million Underlying Equivalent Value, or the remaining Underlying Equivalent Value on a closing transaction valued at less than $1 million. These qualifications ($1 million Underlying Equivalent Value or the remaining Underlying Equivalent Value) remain in the proposed rule.

[7] Because the percentage entitlements for Submitting Members for both FLEX Equity and FLEX Index options are currently contained in one paragraph in CBOE Rule 24A.5, the Exchange's proposal will separate the treatment of Flex Equity and Flex Index options into different paragraphs.

The proposed rule change also amends the language of sub-paragraphs (e)(iii) (A) and (B) of CBOE Rule 24A.5 to state that a submitting member ''will have priority to execute'' the specified share of a trade that is the subject of a RFQ, instead of the term ''be permitted to execute.'' The Exchange initially adopted this rule language in Securities Exchange Act Release No. 37337 in order to clarify that a member may cross more than the designated share as to which he has priority if no one else is willing to trade at the same or a better price.[8] The current filing inadvertently utilized the old rule language. Amendment No. 1 to the filing clarifies that the original rule language will remain unchanged.

The Exchange is also proposing to impose maximum bid-offer spreads on certain FLEX Index options. Currently, under CBOE Rule 24A.9 (d), market-makers are not required to quote a minimum bid-offer spread in FLEX options because of the unique nature of the product in which new series are established periodically by the submission of a RFQ. Based on experience over the last four years, however, the Exchange has determined that it is appropriate to establish maximum bid-offer spreads for Index FLEX AMMs when quoting European-exercise FLEX options overlying the S&P 100 Index (''OEX'') or the S&P 500 Index (''SPX') with a time to expiration of more than two weeks and less than two years.[9] The Exchange expects that the establishment of these spreads will increase customer confidence in the CBOE markets for these products. The CBOE also believes that the establishment of these maximum bid-offer spreads will ensure tight markets for the majority of the Index FLEX RFQs submitted to the CBOE floor; the proposed spreads would have applied to 77% of the RFQs submitted in 1996. The Exchange also believes that if, as expected, the reduction in the entitlement of a trade to a Submitting Member encourages more active participation by market-makers in the quoting process, then bid-offer spreads, through competition, should decrease in any event.

| *Where Bid Is* | *Maximum Bid/Ask Spread Is* |
|---|---|
| Less than $5 | ¾ of $1 |
| At least $5, but not more than $10. | $1 |
| At least $10, but not more than $20. | $1.50 |
| At least $20 | $2 |

Options with a time to expiration greater than one year and less than two years shall have the following maximum bid/ask spreads:

| *Where Bid Is* | *Maximum Bid/Ask Spread Is* |
|---|---|
| Less than $10 | $1.50 |
| At least $10, but not more than $20. | $2 |
| At least $20, but not more than $40. | $3 |
| At least $40 | $4 |

*Compare* CBOE Rule 8.7 regarding maximum bid/ask spreads for non-Flex options.

Because the proposed rules should encourage more active participation of market-makers in the establishment of bid-ask spreads as well as require the quoting of spreads on FLEX Index options within a certain range, CBOE believes that the proposed rules are consistent with and further the objectives of Section 6(b)(5) of the Act in that they are designed to improve communications to and from the Exchange's trading floor in a manner that promotes just and equitable principles of trade, prevents fraudulent and manipulative acts and practices, and maintains fair and orderly markets.

## II. Findings and Conclusions

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, the requirements of Section 6(b)(5).[10] The Commission finds that CBOE's proposal to reduce the Submitting Member's entitlement rate to the greater of 25% or a proportional share of the trade should serve to encourage more active participation by market-makers in FLEX Index options. Specifically, because participating market-makers will be entitled to a greater share of the FLEX trade, they should have more incentive to make markets in FLEX Index options. More active participation should, in turn, result in increased liquidity for the product, which would serve to enhance the market for FLEX Index options.[11] Accordingly, the Commission believes that this portion of the CBOE filing is consistent with the Act in that it should facilitate transactions in securities consistent with investor protection and in furtherance of the public interest.[12]

The Commission also believes that CBOE's proposal to impose maximum bid-offer spreads for Index FLEX AMMs when quoting European-style FLEX options overlying the OEX or the SPX should serve to potentially tighten spreads as well as to ensure that the spreads are no larger than the predetermined range. The Commission believes that the potential for tighter markets in FLEX OEX and SPX contracts as a result of the adoption of maximum bid-ask spreads should serve to increase investors' confidence that the quoted market for these options represents fair and indicative prices. In this regard, the CBOE may wish to adopt maximum bid-ask spreads for other FLEX options. Accordingly, the Commission believes the Exchange's proposal to impose maximum bid-offer spreads for certain FLEX Index options is consistent with the Act in that it should facilitate trading in securities.

*It therefore is ordered*, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CBOE–97–16), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–22293 Filed 8–21–97; 8:45 am]

BILLING CODE 8010–01–M

[8] See Securities Exchange Act Release No. 37337 (June 19, 1996), 61 FR 33561 (June 27, 1996).

[9] Options with a time to expiration greater than two weeks and less than or equal to one year shall have the following bid/ask spreads:

[10] 15 U.S.C. 78f(b)(5) (1988).

[11] The Commission notes that the current entitlement for Submitting Members in FLEX Equity options will remain unchanged at 25% of the trade regardless of the number of participants to the trade.

[12] The Commission also believes that the proposed rule change will not result in any injury to public customers as customer orders on parity will not receive a smaller participation than any other crowd participant.

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[License No. 07/07–0099]**

## Civic Ventures Investment Fund, L.P., Notice of Issuance of a Small Business Investment Company License

On March 18, 1996, an application was filed by Civic Ventures Investment Fund, L.P., at One Metropolitan Square, 211 North Broadway, Suite 2380, St. Louis, Missouri 63102 with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 C.F.R. 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 07/07–0099 on August 1, 1997, to Civic Ventures Investment Fund, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 14, 1997.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 97–22327 Filed 8–21–97; 8:45 am]

BILLING CODE 8025–01–M

## SMALL BUSINESS ADMINISTRATION

### Adoption of FA$TRAK Pilot Loan Program; Meeting

**AGENCY:** Small Business Administration.

**ACTION:** Public meeting on Adoption FA$TRAK Pilot Loan Program for SBA Loans made under Section 7(a) of the Small Business Act.

**SUMMARY:** On March 6, 1995, the SBA published in the **Federal Register** a notice establishing the FA$TRAK loan program as a pilot program to test the implications of allowing selected SBA lenders to use their own documentation and procedures to approve SBA guaranteed loans under $100,000. In return, participating lenders received a maximum SBA guaranty of 50 percent. On September 9, 1997, the SBA will hold a public meeting as part of its evaluation of whether to adopt FA$TRAK as a permanent SBA program and extend the program to additional qualified lenders.

**DATES:** September 9, 1997, 1:30 p.m. to 4:30 p.m.

**LOCATION:** Eisenhower Conference Room, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Charles Thomas, Chief Pilot Operations, Office of Financial Assistance, (202) 205–6656.

**SUPPLEMENTARY INFORMATION:** FA$TRAK, which is part of the Preferred Lenders Program, was conceived to streamline the process by which a lender receives a guaranty from the SBA. The program was designed to utilize, to the maximum extent possible, the existing documentation and procedures of participating lenders. Under the program, lenders are permitted to use their own application forms, internal credit memoranda, notes, collateral documents, servicing documentation, and liquidation documentation. The SBA made every effort to minimize the use of government mandated forms under this program.

Lenders participating in the pilot were authorized to attach an SBA guaranty to an approved loan without having to submit the loan to an SBA field office for a credit analysis or review. Loans were instead forwarded to a centralized SBA processing center (Sacramento) for the assignment of an SBA loan number and a determination of borrower eligibility.

In return for this authority and autonomy, lenders agreed to limit the maximum loan amount to $100,000, accept a maximum guaranty of 50 percent, and waive payment on defaulted loans until after the lender has completed liquidation and SBA has reviewed the underlying documentation supporting the loan.

Approximately 18 banks or bank holding companies have participated in the pilot, although together with their affiliates they number about 60 lenders. From its inception through July 18, 1997, 5,824 FA$TRAK loans for $243 million were approved. A preliminary review of the FA$TRAK portfolio has been completed and no significant problems or adverse trends have been revealed in either the pilot's operation or the loss rates associated with the program. In addition, onsite reviews of several of the leading FA$TRAK lenders did not indicate any apparent or systemic problems.

In considering what action we should take regarding the FA$TRAK pilot, the Agency will look at a variety of issues including, but not limited to, the following: Should—

(1) The program be adopted as a permanent SBA loan program? (2) the program be limited to SBA ''Preferred Lenders''? (3) if not, what criteria should be used to qualify FA$TRAK lenders? (4) participants be encouraged/required to adopt electronic processing of FA$TRAK loan applications via the Internet? (5) lines of credit loans revolve, for example, for a maximum of five years and then be ''termed out'' for as much as an additional five years? (6) the maximum loan amount under the program be increased? (7) interest rates for loans made under the program be subject to different limitations? (8) collateral be required for FA$TRAK loans? and, (9) other regular 7(a) policies be changed for FA$TRAK.

#### Hearing

To ensure the widest possible public participation, the SBA will hold a public hearing on this proposal in Washington, DC at the Small Business Administration at 409 3rd Street, SW., Washington, DC 20416. The meeting will be held on September 9, 1997, from 1:30 p.m. to 4:30 p.m. in the Eisenhower Conference Room.

Interested parties will be given a reasonable time for an oral presentation and may submit written statements of their oral presentation in advance. If you wish to make a presentation, please contact Ms. Lula M. Gardner at (202) 205–6485 at least five days before the hearing. If a large number of participants desires to make statements, a time limitation on each presentation will be imposed.

Members of the hearing panel may ask questions of the speaker, but speakers will not be allowed to question each other. Please submit written questions in advance to the Chair. If the Chair determines them to be relevant, the Chair will direct them to the appropriate panel member.

**Jane Palsgrove Butler,**

*Acting Associate Administrator for Financial Assistance.*

[FR Doc. 97–22331 Filed 8–21–97; 8:45 am]

BILLING CODE 8025–01–M

## SMALL BUSINESS ADMINISTRATION

### Region V Wisconsin State Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Wisconsin State Advisory Council, located in the geographical area of Milwaukee, Wisconsin, will hold a public meeting from 12:00 p.m. to 1:00 p.m., August 25, 1997, at Metro Milwaukee Area Chamber (MMAC), Association of Commerce Building, 756 North Milwaukee Street, Fourth Floor—The Milwaukee Room, Milwaukee, Wisconsin, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Kimberly R. West, U.S. Small Business Administration, 310 W. Wisconsin Ave., Room 400, Milwaukee, Wisconsin 53029, telephone (414) 297–1092.

Dated: August 15, 1997.

**Eugene Carlson,**

*Associate Administrator, Office of Communications & Public Liaison.*

[FR Doc. 97–22328 Filed 8–21–97; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF STATE

**[Public Notice 2587]**

### Office of Foreign Missions (OFM); Information Collection Under Review

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. The purpose of this notice is to allow 60 days for public comments from the date listed at the top of this page in the **Federal Register.** This process is conducted in accordance with 5 Code of Federal Regulation, part 1320.10.

*Summary:* The Office of Foreign Missions (OFM) is requesting OMB approval of form DS–1972 (Driver License and Tax Exemption Card Application. The Office of Foreign Missions (OFM) was created in October 1982, to oversee and regulate the benefits, privileges, and immunities afforded to the following foreign personnel assigned to the United States; diplomatic, consular, specified official representatives of foreign governments to international organizations, and their dependents. The exemption from sales taxes and the operation of a motor vehicle in the United States by these foreign personnel are benefits under the Foreign Missions Act, 22 U.S.C. 301 *et seq.*, which must be obtained through the U.S. Department of State, Office of Foreign Missions.

The following summarizes the information collection proposal submitted to OMB:

*Type of request*—Reinstatement, with change, of a previously approved collection for which approval has expired.

*Originating office*—The Office of Foreign Missions.

*Title of information collection*—Driver License and Tax Exemption Card Application.

*Frequency*—On occasion.

*Form No.*—DS–1972.

*Respondents*—Foreign mission personnel and their dependents in the United States.

*Estimated number of respondents*—12,500.

*Average hours per response*—30 minutes.

*Total estimated burden hours*—6,250.

44 U.S.C. 3405(h) does not apply.

Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology.

*Additional Information or Comments:* Copies of the proposed forms and supporting documents may be obtained from Charles S. Cunningham (202) 647–0596. Comments and questions should be directed to (OMB) Victoria Wassmer (202) 395–5871.

Dated: August 11, 1997.

**Gary N. Galloway,**

*Acting Chief Information Officer.*

[FR Doc. 97–22383 Filed 8–21–97; 8:45 am]

BILLING CODE 4710–06–M

## DEPARTMENT OF STATE

**[Public Notice 2586]**

### The Office of Foreign Missions (OFM)

**AGENCY:** Department of State.

**ACTION:** Information collection under review.

**SUMMARY:** Office of Management and Budget (OMB) approval is being sought for the information collection listed below. The purpose of this notice is to allow 60 days for public comments from the date listed at the top of this page in the **Federal Register**. This process is conducted in accordance with 5 CFR, part 1320.10.

The Office of Foreign Missions (OFM) was created in October 1982, to oversee and regulate the benefits, privileges, and immunities afforded to the following foreign personnel assigned to the United States: diplomatic, consular, specified official representatives of foreign governments to international organizations, and their dependents. Exemption from taxes on utility services and gasoline purchases is a privilege enjoyed by foreign diplomatic missions and personnel in the United States under the provisions of the Vienna Conventions on Diplomatic and Consular Relations and the terms of various bilateral agreements. Under the Foreign Mission Act of 1982, 22 U.S.C. 4301 *et seq*, the Department of State's Office of Foreign Missions (OFM) is given authority to grant privileges and benefits based on reciprocity. The collection of this information will be used to determine this eligibility.

The following summarizes the information collection proposal submitted to OMB:

*Type of Request:* Reinstatement, without change, of previously approved collections for which approval has expired.

*Originating Office:* The Office of Foreign Missions, (OFM).

*Title of Information Collection:* Application for Diplomatic Exemption from Taxes on Utilities and Application for Diplomatic Exemption from Taxes on Gasoline.

*Frequency:* On occasion.

*Form Number:* DSP–99 and DSP–99A.

*Respondents:* 8,000.

*Estimated Number of Respondents:* 40,000.

*Average Hours Per Response:* 12 minutes.

*Total Estimated Burden:* 664 hours.

44 U.S.C. 3405(h) does not apply.

Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology.

**FOR FURTHER ADDITIONAL INFORMATION:** Copies of the proposed forms and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State (202) 647–0596. Comments and questions should be directed to Victoria Wassmer, Office of Management and Budget (202) 395–5871.

Dated: August 11, 1997.

**Gary N. Galloway,**

*Acting Chief Information Officer.*

[FR Doc. 97–22384 Filed 8–21–97; 8:45 am]

BILLING CODE 4710–06–M

## DEPARTMENT OF STATE

**[Public Notice 2585]**

### Bureau of Consular Affairs; Information Collection Under Review

Office of Management and Budget (OMB) approval is being sought for the information collections listed below. The purpose of this notice is to allow 60 days for public comments from the date listed at the top of this page in the **Federal Register.** This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10. 1.

**SUMMARY:** The Bureau of Consular Affairs (CA/PPT/FC) is requesting of OMB reinstatement of form DSP–11 (Application for Passport/Registration) which is used to establish the applicant's citizenship and identity and for Passport Services to determine entitlement to the issuance of a U.S. passport. The information solicited is used in administering responsibilities of the Department under 22 U.S.C. 211a–217a, and E.O. 11295, 26 U.S.C., 6039E, and regulations promulgated thereunder.

The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement, of a previously approved collection for which approval has expired.

Originating office—The Bureau of Consular Affairs.

Title of information collection—Application for Passport/Registration.

Frequency—On occasion.

Form No.—DSP–11.

Respondents—Citizens and Nationals of the United States who are applying for registration as a U.S. citizen abroad.

Estimated number of respondents—4,400,000.

Average hours per response—20 minutes.
Total estimated burden hours—1,466,666.6 hours.

**SUMMARY:** The Bureau of Consular Affairs (CA/PPT/FC) is requesting of OMB reinstatement of form DSP–82 (Application for Passport by Mail). The DSP–82 is used to establish the applicant's citizenship and identity and for Passport Services to determine entitlement to the issuance of a U.S. passport. The information solicited is used in administering responsibilities of the Department under 22 U.S.C. 211a–217a, and E.O. 11295, 26 U.S.C., 6039E, and regulations promulgated thereunder.

The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement, of a previously approved collection for which approval has expired.
Originating office—The Bureau of Consular Affairs.
Title of information collection—Application for Passport by Mail.
Frequency—On occasion.
Form No.—DSP–82.
Respondents—Individuals who are eligible to apply for a United States passport by mail.
Estimated number of respondents—1,700,000.
Average hours per response—15 minutes.
Total estimated burden hours—425,000.

The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement, of a previously approved collection for which approval has expired.
Originating office—The Bureau of Consular Affairs.

Title of information collection—Affidavit of Identifying Witness:

Frequency—On occasion.
Form No.—DSP–71.
Respondents—Citizens of the United States.
Estimated number of Respondents—88,000.
Average hours per response—5 minutes.
Total estimated burden hours—7,333.
44 U.S.C. 3405(h) does not apply.

Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology.

**ADDITIONAL INFORMATION OR COMMENTS:** Copies of the proposed forms and supporting documents may be obtained from Charles S. Cunningham (202) 647–0596. Comments and questions should be directed to (OMB) Victoria Wassmer (202) 395–5871.

Dated: August 11, 1997.

**Gary N. Galloway,**

*Acting Chief Information Officer.*

[FR Doc. 97–22386 Filed 8–21–97; 8:45 am]

BILLING CODE 4710–06–M

## DEPARTMENT OF STATE

**[Public Notice No. 2584]**

### Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, September 25–26, 1997 in Conference Room 1205.

The Committee will meet in open session from 9:00 a.m. through 12:00 p.m. on the morning of Thursday, September 25, 1997. The remainder of the Committee's sessions from 1:45 p.m. on Thursday September 25, until 5:00 p.m. on Friday, September 26, 1997 will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). It has been determined that discussions during these portions of the meeting will involve consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities will be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123, (e-mail histoff@panet.us-state.gov).

Dated: August 12, 1997.

**William Z. Slany,**

*Executive Secretary.*

[FR Doc. 97–22385 Filed 8–21–97; 8:45 am]

BILLING CODE 4710–11–M

## TENNESSEE VALLEY AUTHORITY

### Paperwork Reduction Act of 1995, as Amended by P.L. 104–13; Proposed Collection; Comment Request

August 15, 1997.

**AGENCY:** Tennessee Valley Authority.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority (TVA) is soliciting public comments concerning OMB approval of this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for additional information should be directed to the Acting Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (WR 4Q), Chattanooga, TN 37402–2801; (423) 751–2523; FAX: (423) 751–3400; E-mail: whmccauley@TVA.gov. Written comments should be directed to the Acting Agency Clearing Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

**DATES:** Interested persons are invited to submit comments no later than September 22, 1997.

**SUPPLEMENTARY INFORMATION:** The Tennessee Valley Authority is soliciting comments concerning OMB approval of a three-year generic clearance for customer surveys designed to determine customer demographics, preferences, satisfaction, and feedback.

#### I. Background

In order to comply with the customer consultation requirements of the Government Performance and Results Act of 1993 and to ensure that we are meeting customer requirements and expectations, TVA must conduct periodic customer surveys to determine preferences, satisfaction, solicit feedback and confirm demographics.

#### II. Current Actions

TVA plans to request OMB approval for a generic clearance for an undefined number of surveys to be conducted over the next three years. For each study that TVA undertakes under this generic clearance, OMB will be notified, at least two weeks in advance, and provided with an information copy of the questionnaire (if one is used), which will come from TVA's Questionnaire and Survey Catalog, and all other materials describing the survey activity. TVA plans to conduct a variety of voluntary customer surveys of our electricity generation customers and our appropriated program customers. These surveys may include website questionnaires, written surveys, telephone surveys, individual face-to-face interviews, focus group meetings,

and/or large group studies. They will be designed to gather information from a customer's perspective as prescribed in Executive Order 12862, Setting Customer Service Standards, September 11, 1993. The results will be used as part of an ongoing process to improve TVA's performance.

### III. Estimate of Burden

The average burden per response is estimated to range from 2 minutes for a web-site questionnaire to 3 hours for a large group study. TVA estimates 4,000 annual respondents for a total of 1350 hours annually for the proposed generic customer survey clearance.

### IV. Request for Comments

Comments are invited on:

(a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of TVA's estimate of the burden of the collection of the information;

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

(d) Ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: August 15, 1997.

**William S. Moore,**

*Senior Manager, Administrative Services.*

[FR Doc. 97–22305 Filed 8–21–97; 8:45 am]

BILLING CODE 8120–08–P

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## DEPARTMENT OF TRANSPORTATION

## Office of the Secretary

## Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on April 9, 1997, (62 FR 17276–17277).

**DATES:** Comments must be submitted on or before September 22, 1997.

**FOR FURTHER INFORMATION CONTACT:** Judith Street, ABC–100; Federal Aviation Administration; 800 Independence Avenue, SW.; Washington, DC 20591; Telephone number (202) 267–9895.

**SUPPLEMENTARY INFORMATION:**

### Federal Aviation Administration (FAA)

*Title:* FAA Research and Development Grants.

*OMB Control Number:* 2120–0559.

*Type of Request:* Extension of currently approved collection.

*Forms:* SF–272; SF–3881; SF–LLL; FAA 9550–1; FAA 9550–2; FAA 9550–3; FAA 9550–5; SF–269; SF–270.

*Affected Public:* Business or other for profit organizations, States, Local and Tribal Governments.

*Abstract:* The FAA Aviation Research and Development Grants Program establishes uniform policies and procedures for the award and administration of research grants to colleges, universities, not-for-profit organizations, and profit organizations for security research. This program implements OMB Circular A–110, Public Law 101–508, Section 9205, 9208 and Public Law 101–604, Section 107(d).

*Annual Estimated Burden Hours:* 2800 annual burden hours.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer.

*Comments are Invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on August 18, 1997.

**Phillip A. Leach,**

*Clearance Officer, United States Department of Transportation.*

[FR Doc. 97–22341 Filed 8–21–97; 8:45 am]

BILLING CODE 4910–62–P

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## 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 the Dothan-Houston County Airport, Dothan, Alabama

**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 the Dothan-Houston County 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 September 22, 1997.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA/Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Art Morris, III, Airport Manager of the Dothan-Houston County Airport Authority, Inc., at the following address: 720 Airport Drive, Dothan, Alabama 36303.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Dothan-Houston Airport Authority, Inc., under § 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roderick T. Nicholson, Project Manager, FAA Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306, telephone number 601–965–4628. 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 the Dothan-Houston County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 11, 1997, the FAA determined that the application to impose and use the revenue from a PFC

submitted by the Dothan-Houston County Airport Authority, Inc., was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 15, 1997.

The following is a brief overview of the application.

*PFC Application Number:* 97–01–C–00–DHN.

*Level of the proposed PFC:* $3.00.

*Proposed charge effective date:* 2/1/1998.

*Proposed charge expiration date:* 11/30/2028.

*Total estimated PFC revenue:* $5,515,948.

*Brief description of proposed project(s):* (1) Terminal Building; (2) Apron Construction/Rehabilitation; (3) Security Fencing; (4) Access Road Relocation (Partial); (5) Baggage Delivery/Pickup Area; and (6) Directional/Informational Signage.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: No class or classes of air carriers to be excluded from PFC collections.

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 Dothan-Houston County Airport Authority, Inc.

Issued in Jackson, Mississippi, on August 11, 1997.

**Wayne Atkinson,**

*Manager, Airports District Office, Southern Region, Jackson, Mississippi.*

[FR Doc. 97–22354 Filed 8–21–97; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of 2 currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

**DATES:** Comments must be received no later than October 21, 1997.

**ADDRESSES:** Submit written comments on any or all of the following proposed activities by mail to either: Ms. Gloria Swanson Eutsler, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590, or Ms. MaryAnn Johnson, Office of Information Technology and Productivity Improvement, RAD–23, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number _____.'' Alternatively, comments may be transmitted via facsimile to (202) 632–3843 or (202) 632–3876, or E-mail to Ms. Eutsler at gloria.swanson@fra.dot.gov, or to Ms. Johnson at maryann.johnson@fra.dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

**FOR FURTHER INFORMATION CONTACT:** Ms. Gloria Swanson Eutsler, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590 (telephone: (202) 632–3318) or MaryAnn Johnson, Office of Information Technology and Productivity Improvement, RAD–23, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590 (telephone: (202) 632–3226). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding: (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). See 44 U.S.C. 3506(c)(2)(A) (i)–(iv); 5 CFR 1320.8(d)(1) (i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

Below are brief summaries of the 2 currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

*Title:* Special Notice for Repairs (49 CFR 216).

*OMB Control Number:* 2130–0504.

*Abstract:* FRA and State inspectors have the authority to immediately order the cessation of use of unsafe equipment, reduce the authorized operating speed on a section of track, or recommend that track be removed from service when they are found to be immediately unsafe for service. The railroad may, within 5 days after receiving such notice, appeal to FRA.

*Form Number(s):* FRA F 6180.8 and 8a.

*Affected Public:* Businesses.

*Respondent Universe:* 680 railroads.

*Frequency of Submission:* On occasion.

*Reporting Burden:*

| Information collection requirement | Respondent universe | Total responses | Average time per response | Total annual burden hours |
|---|---|---|---|---|
| Special Notices for Repair | 680 Railroads | 200 notices | 5 minutes | 17 |
| Emergency Order—Track | 680 Railroads | 2 Orders | 1 hour | 2 |

*Estimated Total Annual Burden Hours:* 19.

*Status:* Regular Review.

*Title:* Designation of Qualified Persons (49 CFR 215).

*OMB Control Number:* 2130–0511.

*Abstract:* Under the Federal Railroad Safety Act of 1970, the Federal Railroad Administration promulgated the Freight Car Safety Standards—49 CFR part 215. These standards require each railroad to conduct regular inspections and take necessary remedial action relative to repairs or movement for repairs of defective railroad freight cars. Under part 215.11, railroads are required to designate persons qualified to inspect freight cars for compliance with part 215 and persons who shall determine restrictions on movements of defective cars. Inspectors are designated as qualified to inspect freight cars to ensure that the cars receive a full and accurate inspection for compliance with part 215. Under ''Movement of Defective Cars for Repair'' designated inspectors are necessary to determine what repairs are necessary for defective freight cars. Repairs to railroad freight cars are divided into two categories. ''Running'' or light repairs are confined to defects to freight cars requiring movement of equipment and repair personnel to the freight car's location. The freight car's defect or damage repairs can be performed at that location. The second category is specialized or heavy repairs. the freight car must be moved to a location where specialized equipment is located. This type of movement for repairs involves freight cars that may not be safely moved without precaution. The movement must be authorized by an employee knowledgeable about equipment limitations which might include speed, track structure, curvature or other conditions that normally would not be of concern.

*Form Number(s):* N/A.

*Affected Public:* Businesses.

*Respondent Universe:* 680 Railroads.

*Frequency of Submission:* On occasion.

*Total Annual Responses:* 1,500 records.

*Average Time per Response:* 2 minutes.

*Estimated Total Annual Burden Hours:* 50 hours.

*Status:* Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 C.F.R. 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, D.C. on August 11, 1997.

**Hung Phan,**

*Acting Director, Office of Information Technology and Support Systems, Federal Railroad Administration.*

[FR Doc. 97–21820 Filed 8–21–97; 8:45 am]

BILLING CODE 4910–62–M

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applications for modification of exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

**DATES:** Comments must be received on or before September 8, 1997.

**ADDRESS COMMENTS TO:** Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

**FOR FURTHER INFORMATION:** Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

| Application No. | Docket No. | Applicant | Modification of exemption |
|---|---|---|---|
| 6922–M | | Solvay Fluorides, Greenwich, CT (See Footnote 1) | 6922 |
| 7026–M | | Walter Kidde Aerospace, Wilson, NC (See Footnote 2) | 7026 |
| 10138–M | | BetzDearborn Inc., Trevose, PA (See Footnote 3) | 10138 |
| 11167–M | | Eco-Pak Specialty Packaging, Elizabethton, TN (See Footnote 4). | 11167 |
| 11248–M | | HAZMATPAC, Houston, TX (See Footnote 5) | 11248 |
| 11856–M | RSPA–97–2530–5 | Olin Corporation, Chandler, AZ (See Footnote 6) | 11856 |
| 11902–M | RSPA–97–2669–2 | Eurotainer USA, Inc., Somerset, NJ (See Footnote 7) | 11902 |

*(1)* To modify the exemption to include DOT Specification 110A800W tanks for use in transporting trifluoroacetyl chloride, Class 8, PIH.

*(2)* To modify the exemption to provide for an alternative container life for non-DOT specification welded steel pressure vessels, for use in transporting compressed gas, Division 2.3.

*(3)* To modify the exemption to provide for the use of intermediate bulk containers for transporting different classes of hazardous materials.

*(4)* To modify the exemption to provide for a similar type portable tank suitable for transporting solids and liquids specified as Packaging Group 1 materials, as well as materials poisonous by inhalation.

*(5)* To modify the exemption to provide for Class 9, spontaneously combustible, dangerous when wet oxidizers and poisons by inhalation in materials to be transported specially designed combination type packaging.

*(6)* To modify the exemption to provide for the transportation of a thermal transport system containing ammonia anhydrous, as a separate unit, to accompany satellite shipments.

*(7)* To reissue an exemption originally issued on an emergency basis authorizing relief from 173.225(e)(3)(c) concerning portable tank pressure relief device setting and capacity requirements for certain organic peroxides.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on August 15, 1997.

**J. Suzanne Hedgepeth,**

*Director, Office of Hazardous Materials, Exemptions and Approvals.*

[FR Doc. 97–22280 Filed 8–21–97; 8:45 am]

BIILING CODE 4910–60–M

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Office of Hazardous Materials Safety; Notice of Applications for Exemptions

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applicants for exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before September 22, 1997.

**ADDRESS COMMENTS TO:** Dockets Unit, Research and Special Programs Administration, Room 8421, DHM–30, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

**FOR FURTHER INFORMATION:** Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW. Washington, DC 20590.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on August 15, 1997.

**J. Suzanne Hedgepeth,**

*Director, Office of Hazardous Materials Exemptions and Approvals.*

NEW EXEMPTIONS

| Application | Docket No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 11930–N | RSPA–97–2804 | Boeing North American, Inc., Downey, CA. | 49 CFR 173.226, 173.336. | To authorize the transportation in commerce of non-specification propellant tanks designed to military specification, non-pressurized during shipment, containing hazardous materials classed in Division 6.1 and 2.3, to be transported in non-specification packaging. (modes 1, 3) |
| 11933–N | RSPA–97–2805 | The Columbiana Boiler Co., Columbiana, OH. | 49 CFR 173.3, 173.304. | To authorize the manufacture, mark and sale of a non-DOT specification cylinder (pressure vessel) for the transportation in commerce of chlorine, Division 2.3. (modes 1, 2, 3) |
| 11934–N | RSPA–97–2806 | UtiliCorp United, Inc., Omaha, NE. | 49 CFR 172.101, 173.242, 173.54, 173.56, 173.57, 177.801. | To authorize the transportation of bulk shipment of certain hazard liquids and solids, including solids with dual hazards in portable tanks similar to DOT-Specification 51. (mode 1) |
| 11935–N | RSPA–97–2807 | Celanese Ltd., Dallas, TX. | 49 CFR 173.26, 179.13. | To authorize an exemption to increase gross weight on rail to 286,000 pounds for CELX 98330–98369 tank cars transporting acrylic acid, inhibited, Class 8. (mode 2) |
| 11936–N | RSPA–97–2808 | Celanese, Dallas, TX | 49 CFR 173.26, 179.13. | To authorize an exemption to increase gross weight on rail to 286,000 pounds for CELX–13600–13656 Series Tank Cars transporting formaldehyde solutions, classed as Class 8 and formaldehyde solutions, Class 3. (mode 2) |
| 11938–N | RSPA–97–2809 | Steel Shipping Container Institute, Washington, DC. | 49 CFR 178.3(a)(5), 178.503(a)(10). | To authorize the transportation in commerce of non-bulk containers with alternative markings for use in transporting various classes of hazardous materials. (modes 1, 2, 3, 4) |

[FR Doc. 97–22281 Filed 8–21–97; 8:45 am]

BILLING CODE 4910–60–M

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33431]**

### Coach USA, Inc. and K–T Contract Services, Inc.—Control and Merger Exemption—Gray Line Tours of Southern Nevada

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Notice of Filing of Petition for Exemption.

**SUMMARY:** Coach USA, Inc. (Coach), a noncarrier that controls 27 motor passenger carriers, and K–T Contract Services, Inc. (K–T), a motor carrier of passengers wholly owned by Coach, seek to be exempted, under 49 U.S.C. 13541, from the prior approval requirements of 49 U.S.C. 14303, to acquire control of Gray Line Tours of Southern Nevada (Gray Line) and to merge Gray Line into K–T.

**DATES:** Comments must be filed by October 6, 1997. Petitioners may file a reply by October 21, 1997.

**ADDRESSES:** Send an original and 10 copies of comments referring to STB Finance Docket No. 33431 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington DC 20423–0001. In addition, send one copy of comments to Petitioners' representatives: Betty Jo Christian and David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Avenue, NW., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 565–1600. (TDD for the hearing impaired: (202) 565–1695.)

**SUPPLEMENTARY INFORMATION:** Coach, a noncarrier, and its wholly owned subsidiary K–T, a motor carrier of passengers (MC 218583), seek an exemption to acquire control of Gray Line (MC–127564), a Nevada-based motor carrier that operates in interstate and intrastate commerce, and to merge Gray Line into K–T.[1]

By virtue of exemptions issued to it in STB Finance Docket Nos. 32876 (Sub-No. 1), 33073, 33343, and 33377,[2] Coach currently controls 27 motor carriers of passengers, including co-petitioner K–T.[3] Coach and K–T state that their acquisition of control of Gray Line through the acquisition of Gray Line's stock by K–T will not inhibit competition or reduce transportation options available to the public.

Petitioners also claim that the acquisition of control of Gray Line will allow that carrier to offer improved service at lower costs made possible by the coordination of functions, centralized management, financial support, rationalization of resources, and economies of scale that are anticipated from the common control. Coach also states that all collective bargaining agreements will be honored, that employee benefits will improve, and that no change in management personnel is planned. Coach and K–T submit that a merger of K–T and Gray Line would result in the more efficient use of transportation resources and improved service to the public.

Additional information may be obtained from Petitioners' representatives.

A copy of this notice will be served on the Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530.

Decided: August 18, 1997.

By the Board, Chairman Morgan, Vice Chairman Owen.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 97–22473 Filed 8–21–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The stock of Gray Line has been placed in an independent voting trust to avoid any unlawful control pending disposition of this proceeding.

[2] *See Notre Capital Ventures II, LLC and Coach USA, Inc.—Control Exemption—Arrow Stage Lines, Inc.; Cape Transit Corp.; Community Coach, Inc.; Community Transit Lines, Inc.; Grosvenor Bus Lines, Inc.; H.A.M.L. Corp.; Leisure Time Tours; Suburban Management Corp.; Suburban Trails, Inc.; and Suburban Transit Corp.*, STB Finance Docket No. 32876 (Sub-No. 1) (STB served May 3, 1996); *Coach USA, Inc.—Control Exemption—American Sightseeing Tours, Inc.; California Charters, Inc.; Texas Bus Lines, Inc.; Gulf Coast Transportation, Inc.; and K–T Contract Services, Inc.*, STB Finance Docket No. 33073 (STB served Nov. 8, 1996); *Coach USA, Inc.—Control Exemption—Progressive Transportation, Inc.; Powder River Transportation Services, Inc.; Worthen Van Service, Inc.; and PCSTC, Inc.*, STB Finance Docket No. 33343 (STB served May 15, 1997); and *Coach USA, Inc.—Control Exemption—Airport Bus of Bakersfield; Antelope Valley Bus, Inc.; Desert Stage Lines, Inc.; Bayou City Coaches, Inc.; Kerrville Bus Company, Inc.; Red & Tan Charter, Inc.; Red & Tan Tours; and Rockland Coaches, Inc.*, STB Finance Docket No. 33377 (STB served May 15, 1997).

[3] They include: Airport Bus of Bakersfield (MC–163191), American Sightseeing Tours, Inc., d/b/a ASTI (MC–252353), Antelope Valley Bus, Inc. (MC–125057), Arrow Stage Lines, Inc. (MC–29592), Bayou City Coaches, Inc. (MC–245246), California Charters, Inc. (MC–241211), Cape Transit Corp. (MC–161678), Community Coach, Inc. (MC–76022), Community Transit Lines, Inc. (MC–145548), Desert Stage Lines, Inc. (MC–140919), Grosvenor Bus Lines, Inc. (MC–157317), Gulf Coast Transportation, Inc., d/b/a Gray Line Tours of Houston (MC–201397), H.A.M.L. Corp. (MC–194792), K–T Contract Services, Inc. (MC–218583), Kerrville Bus Company, Inc. (MC–27530), Leisure Time Tours (Leisure Time) (MC–142011), PCSTC, Inc., d/b/a Pacific Coast Sightseeing/Gray Line of Anaheim-Los Angeles (MC–184852), Powder River Transportation Services, Inc. (MC–161531), Progressive Transportation Services, Inc. (MC–247074), Red & Tan Charter, Inc. (MC–204842), Red & Tan Tours, Inc. (MC–162174), Rockland Coaches, Inc. (MC–29890), Suburban Management Corp. (MC–264527), Suburban Trails, Inc. (MC–149081), Suburban Transit Corp. (MC–115116), Texas Bus Lines, Inc. (MC–37640), and Worthen Van Service, Inc. (MC–142573).

In *Coach USA, Inc.—Control Exemption—American Charters, Ltd.*, STB Finance Docket No. 33393, Coach seeks an exemption to acquire control over American Charters, Ltd. (MC–153814). The Board served and published a notice in the **Federal Register** (62 FR 28531) on May 23, 1997, instituting an exemption proceeding. Comments were due by June 23, 1997; none was filed. A final decision is currently pending with the Board.

In *Coach USA, Inc., and Leisure Time Tours—Control and Merger Exemption—Van Nortwick Bros., Inc., The Arrow Line, Inc., and Trentway-Wagar, Inc.*, STB Finance Docket No. 33428, Coach and Leisure Time seek an exemption to acquire control of Van Nortwick Bros. and merge Van Nortwick into Leisure Time, which will remain as the surviving entity. Coach also seeks an exemption to acquire control of two additional motor passenger carriers, The Arrow Line, Inc., and Trentway-Wagar, Inc.

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33435]**

### K. Earl Durden, Rail Management & Consulting Corporation, and Rail Partners, L.P.; Acquisition of Control Exemption; Pennington Railroad, Inc

K. Earl Durden (Durden), Rail Management & Consulting Corporation (RMCC), and Rail Partners, L.P. (Partners)[1] (collectively, applicants), have filed a notice of exemption[2] to acquire control of Pennington Railroad, Inc. (Pennington), a noncarrier. According to applicants, before the closing of the transaction, Pennington's parent company, James River Paper Company, Inc. (JRP) will merge Pennington into the Meridian & Bigbee Railroad Company (Meridian), a Class III rail carrier that is also owned and

[1] Durden, RMCC, and Partners control 12 Class III rail carriers located in Alabama, Arizona, Arkansas, Florida, Georgia, Kentucky, North Carolina, Tennessee, Texas, and Wisconsin. They are: Atlantic & Western Railway, L.P.; The Bay Line Railroad, L.L.C.; Copper Basin Railway; East Tennessee Railway, L.P.; Galveston Railroad, L.P.; Georgia Central Railway, L.P.; KWT Railway, Inc.; Little Rock & Western Railway, L.P.; Tomahawk Railway, L.P.; Valdosta Railway, L.P.; Western Kentucky Railway, L.L.C.; and Wilmington Terminal Railroad, L.P. These rail carriers are referred to as the RMCC Rail Group.

[2] Concurrent with the filing of the notice of exemption, applicants filed, pursuant to 49 CFR 1117.1, a petition to file under seal the Agreement of Merger in this proceeding. By decision served August 18, 1997, the Board granted applicants' request.

controlled by JRP. Upon consummation of the transaction, Pennington will remain as the surviving corporation and Pennington will therefore become a Class III rail carrier. Pennington will then merge into M&B Railroad, L.L.C. (MBRR), a noncarrier entity wholly owned and controlled by applicants,[3] and applicants will thereby assume control of Pennington. Applicants state that the transaction was expected to be consummated on or about July 31, 1997.

Applicants state that: (1) The merged MBRR will not connect with any other railroad in the RMCC Rail Group; (2) MBRR's merger with Pennington is not part of a series of anticipated transactions that would connect the railroads of the RMCC Rail Group with each other; and (3) the transaction does not involve a Class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2). The purpose of the transaction is to transfer ownership of, and responsibility for, Pennington from JRP to applicants, thereby enabling JRP to concentrate on its core business operations, without distractions related to its single railroad operation, while allowing applicants to expand their railroad operations into a new part of the country. MBRR will continue to handle freight for customers Meridian previously served, without material changes in the level or quality of transportation service provided.

Under 49 U.S.C. 10502 (g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326 (c), however, does not provide for labor protection for transactions under sections 11324–25 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under statute, may not impose labor protective conditions for this transaction.[4]

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not stay the transaction. An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33435, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Donald G. Avery, Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, DC 20036.

Decided: August 18, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 97–22329 Filed 8–21–97; 8:45 am]

BILLING CODE 4915–00–P

[3] According to applicants, the corporate merger of Meridian into Pennington, followed by the corporate merger of Pennington into MBRR, will result in MBRR's complete assumption of Meridian's railroad operations and corporate obligations. Applicants also state that MBRR, as the corporate successor of Meridian, will conduct Meridian's railroad operations without material change.

[4] Applicants note, however, that MBRR is inheriting, and affirmatively assuming, all of Meridian's collective bargaining agreements with the labor organizations that represent its employees, and MBRR will continue the employment of all of Meridian's employees covered by such collective bargaining agreements.

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–55 (Sub–No. 521X)]**

### CSX Transportation, Inc.; Abandonment Exemption; in Fulton County, GA

On August 4, 1997, CSX Transportation, Inc. (CSXT), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a portion of its line of railroad known as the Atlanta Terminal Subdivision, extending from railroad milepost ANB–864.04 near Wheeler St. to railroad milepost ANB–864.62 at the end of the track at Simpson St., which traverses U.S. Postal Service zip Code 30318, a distance of 0.58 miles, in Fulton County, Ga. CSXT has indicated that there are no stations on the line.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by November 21, 1997.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $900 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than September 11, 1997. Each trail use request must be accompanied by a $150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 521X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. (TDD for the hearing impaired is available at (202) 565–1695.)

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: August 18, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 97–22330 Filed 8–21–97; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request For Form 9117

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 9117, Excise Tax Program Order Blank for Forms and Publications.

**DATES:** Written comments should be received on or before October 21, 1997 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Excise Tax Program Order Blank for Forms and Publications.

*OMB Number:* 1545–1096.

*Form Number:* Form 9117.

*Abstract:* Form 9117 allows taxpayers who must file Form 720 returns a systemic way to order additional tax forms and informational publications.

*Current Actions:* Changes to Form 9117.

Form 8807, ''Certain Manufacturers and Retailers Excise Taxes (for quarters before April 1996) is now obsolete and has been removed from the form. The name and address part of the form is no longer used as a label. A computerized label is automatically generated as the order is released from the system. The reverse side of the form will contain alternative ways to obtain tax forms and information.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Business or other for-profit organization.

*Estimated Number of Respondents:* 15,000.

*Estimated Time Per Respondent:* 2 minutes.

*Estimated Total Annual Burden Hours:* 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

## Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 15, 1997.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 97–22398 Filed 8–21–97; 8:45 am]

BILLING CODE 4830–01–U

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## Art Advisory Panel—Notice of Closed Meeting

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of closed meeting of art advisory panel.

**SUMMARY:** Closed meeting of the art advisory panel will be held in Washington, DC.

**DATES:** The meeting will be held September 18th and 19th, 1997.

**ADDRESSES:** The closed meeting of the Art Advisory Panel will be held on September 18th and 19th, 1997, in room 118, beginning at 9:30 a.m., Aerospace Center Building, 901 D Street, SW., Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Karen Carolan, C:AP:AS:4 901 D Street, SW., Washington, DC 20024. Telephone (202) 401–4128, (not a toll free number).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on September 18th and 19th, 1997, in room 118, beginning at 9:30 a.m., Aerospace Center Building, 901 D Street, SW., Washington, DC 20024.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7) of Title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a significant regulatory action as defined in Executive Order 12866 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

**Michael P. Dolan,**

*Acting Commissioner of Internal Revenue.*

[FR Doc. 97–22399 Filed 8–21–97; 8:45 am]

BILLING CODE 4830–01–U

# Corrections

**Federal Register**

Vol. 62, No. 163

Friday, August 22, 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 TRANSPORTATION

### Federal Aviation Administration

### Notice of Availability of Draft Environmental Impact Statement (EIS), Notice of Public Comment Period and Schedule of Public Hearings

*Correction*

In notice document 97–21662 appearing on page 43768 in the issue of Friday, August 15, 1997 make the following correction:

In the second column, under **ADDRESSES**, in the fourth line ''The Bach Club'' should read ''The Beach Club''.

**BILLING CODE 1505-01-D**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

**[Docket No. RSPA–97–2707; Notice 1]**

### Pipeline Safety: Liquefied Natural Gas Facilities Petition for Waiver; Applied LNG Technologies

*Correction*

In notice document 97–20468, beginning on page 41993, in the issue of Monday, August 4, 1997, make the following correction:

On page 41994, in the second column, in the last paragraph, in the second line, ''September 30, 1997'' should read ''September 3, 1997''.

**BILLING CODE 1505-01-D**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-427-801, A-428-801, A-475-801, A-588-804, A-485-801-, A-559-801, A-401-801, A-412-801]**

### Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Initiation of Antidumping Duty Administrative Reviews and Notice of Request for Revocation of an Order

*Correction*

In the issue of Thursday, June 26, 1997, on page 34504, in the third column, in the correction of notice document 97-15867, in the table, the first entry under ''France A-427-801'' should read as follows:

| Proceedings and firms | Domestic like product |
|---|---|
| France A–427–801: | |
| SNFA | Ball & Cylindrical. |

**BILLING CODE 1505-01-D**

federal register

Friday
August 22, 1997

# Part II

# Environmental Protection Agency

**40 CFR Part 86**

**Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: State Commitments to National Low Emission Vehicle Program; Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 86**

**[AMS–FRL–5872–8]**

**RIN 2060–AF75**

## Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: State Commitments to National Low Emission Vehicle Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Supplemental notice of proposed rulemaking (SNPRM).

**SUMMARY:** For several years, EPA, the Ozone Transport Commission (OTC) States, the auto manufacturers and other interested parties have been developing a voluntary clean car program called the National Low Emission Vehicle (''National LEV'') program, which is designed to reduce smog and other pollution from new motor vehicles. National LEV would be a regulatory program that would be enforceable in the same manner as any other federal new motor vehicle program, except that it can only come into effect if the OTC States and the auto manufacturers agree to it.

A significant amount of progress has been made in developing this program. In October, 1995, EPA proposed the National LEV program. In June of this year, EPA issued a final rule setting forth the basic framework and regulatory provisions of the National LEV program. EPA will resolve the remaining issues in a supplemental final rule it intends to issue this fall. This supplemental notice of proposed rulemaking (SNPRM) seeks comment on some of the remaining issues to be addressed in the supplemental final rule.

**DATES:** Written comments on this SNPRM must be submitted by September 22, 1997 to the address specified below. EPA will hold a public hearing on this SNPRM on September 8, 1997 if one is requested by August 29, 1997. This hearing, if requested, would begin at 9:00 a.m. and continue until 4:30 p.m. or until all commenters have the opportunity to testify.

**ADDRESSES:** Interested parties may submit written comments (in triplicate, if possible) to Public Docket No. A–95–26, at: Air Docket Section, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 (Telephone 202–260–7548; Fax 202–260–4400). Materials relevant to this final rule have been placed in Public Docket No. A–95–26. The docket is located at the above address, in Room M–1500, Waterside Mall, and may be inspected weekdays between 8:00 a.m. and 5:30 p.m. A reasonable fee may be charged by EPA for copying docket materials.

Members of the public may contact the person indicated below to find out whether a hearing will be held and, if so, the exact location. Requests for a public hearing should be directed to the contact person indicated below. The hearing, if requested, will be held in the Ann Arbor, Michigan metropolitan area.

For further information on electronic availability of this SNPRM, see the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** Karl Simon, Office of Mobile Sources, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Telephone (202) 260–3623; Fax (202) 260–6011; e-mail simon.karl@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

### Regulated Entities

Entities potentially regulated by this action are those that manufacture and sell motor vehicles in the United States. Regulated categories and entities include:

| Category | Examples of regulated entities |
|---|---|
| Industry ..... | New motor vehicle manufacturers. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your activities are regulated by this action, you should carefully examine the applicability criteria in § 86.1701–97 of the rule published in the June 6, 1997 **Federal Register** (62 FR 31192). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

### Obtaining Electronic Copies of the Regulatory Documents

The preamble, regulatory language, regulatory support document, and other related documents are also available electronically from the EPA Internet Web site. This service is free of charge, except for any cost you already incur for internet connectivity. The electronic version of this proposed rule is made available on the day of publication on the primary Web site listed below. The EPA Office of Mobile Sources also publishes **Federal Register** notices and related documents on the secondary Web site listed below.

1. http://www.epa.gov/docs/fedrgstr/EPA-AIR/ (either select desired date or use Search feature)
2. http://www.epa.gov/OMSWWW/lev-nlev.htm

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

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## II. Background [1]

This Supplemental Notice of Proposed Rulemaking (SNPRM) is another step towards a voluntary clean car program (''National LEV'') that will help control emissions nationwide as well as in the northeastern states. As discussed in previous **Federal Register** documents,[2] there have been a number of regulatory and other steps in the development of this program. The process will conclude with EPA establishing all the regulations necessary to set up the voluntary clean car program, which will then come into effect if the auto manufacturers and the OTC States commit to it. In June of this year, EPA published a final rule setting forth the framework for the program, including the specific standards that would apply to new motor vehicles if manufacturers opted in. See 62 FR 31192 (June 6, 1997) (''Final Framework Rule''). This SNPRM solicits comments on specified program issues that EPA must resolve to finalize the regulations for the National LEV program.[3] Once EPA issues that supplemental final rule, it will be up to the OTC States and the auto manufacturers to determine whether the program comes into effect.

Under the National LEV program, auto manufacturers would have the option of agreeing to comply with tailpipe standards that are more stringent than EPA can mandate prior to model year (MY) 2004. Once manufacturers commit to the program, the standards will be enforceable in the same manner that other federal motor vehicle emissions control requirements are enforceable. See the Final Framework Rule at 62 FR 31201–31223 for a detailed discussion of the program structure, tailpipe and related standards, and legal authority for and enforceability of National LEV. Manufacturers have indicated their willingness to volunteer to meet these tighter emissions standards if EPA and the northeastern states (i.e., those in the Ozone Transport Commission (OTC) or the ''OTC States'') agree to certain conditions, including providing manufacturers with regulatory stability and reducing regulatory burdens by harmonizing federal and California motor vehicle emissions standards.

The National LEV program has been developed through an unprecedented, cooperative effort by the OTC States, auto manufacturers, environmentalists, fuel providers, EPA and other interested parties. The OTC States and environmentalists provided the opportunity for this cooperative effort by pushing for adoption of the California Low Emission Vehicle (CAL LEV) program throughout the northeast Ozone Transport Region (OTR). Under EPA's leadership, the states, auto manufacturers, environmentalists, and other interested parties then embarked on a process to develop a voluntary National LEV program, a process marked by extensive public participation and a focus on joint problem solving. See the Final Framework Rule at 62 FR 31199 and the NPRM at 60 FR 52739–52740 for further discussion of public participation in the National LEV decisionmaking process.

National LEV will provide public health and environmental benefits by reducing air pollution nationwide. Both inside and outside the OTR, National LEV will reduce ground level ozone, the principal harmful component in smog, as well as emissions of other pollutants, including particulate matter (PM), benzene, and formaldehyde. The Final Framework Rule contains a substantive discussion on the health and environmental benefits of the National LEV program. See 62 FR 31195. EPA has determined that the National LEV program will result in emissions reductions in the OTR that are equivalent to or greater than the emissions reductions that would be achieved through OTC State Section 177 Programs. National LEV will also provide manufacturers regulatory stability and reduce regulatory burden by harmonizing federal and California motor vehicle standards. This will reduce testing and design costs for motor vehicles, as well as allow more efficient distribution and marketing of vehicles nationwide. See the Final Framework Rule at 60 FR 31195–31197 and 31224 for further discussion of the benefits of the National LEV program.

In addition to the national public health benefits that would result from National LEV, the program has been motivated largely by the OTC's efforts to reduce motor vehicle emissions either by adoption of the CAL LEV program throughout the OTR or by adoption of the National LEV program. One of the OTC States' efforts was a petition the OTC filed with EPA. On December 19, 1994, EPA approved this petition, which requested that EPA require all OTC States to adopt the CAL LEV program (called the Ozone Transport Commission Low Emission Vehicle (OTC LEV) program). See 60 FR 4712 (January 24, 1995) (''OTC LEV Decision''). See the Final Framework Rule at 60 FR 31195 for a summary of this decision. In February of this year, the U.S. Court of Appeals for the District of Columbia affirmed states' rights to adopt the CAL LEV program, but reversed EPA's decision requiring the OTC States to do so. Some, but not all, OTC States have adopted CAL LEV programs to date.

Given statutory constraints on EPA, National LEV will be implemented only if it is agreed to by the OTC States and the auto manufacturers. EPA does not have authority to force either the OTC States or the manufacturers to sign up to the program. EPA cannot require the auto manufacturers to meet the National LEV standards, absent the manufacturers' consent, because section 202(b)(1)(C) of the Clean Air Act (CAA, or ''the Act'') prevents EPA itself from mandating new exhaust standards applicable before model year 2004. The auto manufacturers have indicated that they would be willing to opt into National LEV only if the OTC States make certain commitments, including committing to allow the manufacturers to comply with National LEV in lieu of Section 177 Programs. EPA cannot require the OTC States to make such commitments (although EPA can issue regulations to help make the commitments enforceable). Thus, National LEV cannot come into effect

[1] Although this section contains a brief summary of the National LEV program and the process that led up to it, this SNPRM assumes that the reader has an in-depth understanding of the National LEV program and is best read as a supplement to the October, 1995, NPRM and the June, 1997, Final Framework Rule. Readers should review those documents for in-depth discussion of the program, the process and other background information.

[2] See 60 FR 4712 (Jan. 24, 1995), 60 FR 52734 (Oct. 10, 1995), 62 FR 31192 (June 6, 1997).

[3] This SNPRM supplements EPA's October 10, 1995, proposal for the National LEV program (60 FR 52734) (''NPRM'').

absent the agreement of the auto manufacturers and the OTC States.

Over the past several years, the OTC States and the auto manufacturers have conducted negotiations to develop an agreement on National LEV to be contained in a Memorandum of Understanding (MOU). The parties have reached agreement on most provisions of the National LEV program. Each side has sent EPA an MOU that it has initialed, indicating its agreement with the National LEV program as contained in that Memorandum of Understanding.[4] Although there are differences in the two Memoranda, they show that agreement has been reached between the OTC States and the auto manufacturers on most of the provisions of the National LEV program. Based on the MOUs provided to the Agency, EPA issued the Final Framework Rule on June 6, 1997, setting the framework for and describing most of the elements of the National LEV program.

Although the parties had hoped to jointly sign a comprehensive MOU affirming their mutual agreement on the National LEV program, the parties now agree that further discussions are unlikely to result in resolution of the last outstanding issues. Nonetheless, EPA and the parties believe that National LEV would provide substantial public health and environmental benefits. Failure to come to agreement on a National LEV program would be a significant lost opportunity.

EPA believes that there is sufficient common ground between the parties to provide a basis for a National LEV program that all parties could agree to opt into, even if the parties do not first come to agreement on an MOU laying out the elements of that program. Therefore, EPA intends to issue a supplemental final rule that would allow the parties to opt into National LEV even without final agreement on an MOU. In that final rule, EPA plans to resolve the remaining issues. To do so, EPA must first take comment on the issues presented in this notice. EPA believes that finalizing a program for the OTC States and manufacturers to evaluate as a whole presents the greatest likelihood that the country will achieve the benefits of National LEV.

EPA is proposing to resolve most of the outstanding issues in the National LEV program. EPA believes that a targeted proposal will speed the rulemaking process, give the parties a better sense of the likely parameters of the final program, and help to focus attention on the few key critical issues that remain. Nevertheless, in the few areas where the OTC States and manufacturers are farther apart in their positions and in the areas where EPA needs more factual information to support a decision, the Agency is explicitly taking comment on several options.

In this SNPRM, EPA is making proposals and soliciting public comment on issues relating to how the OTC States will voluntarily opt into the National LEV program and commit to allow motor vehicle manufacturers to comply with the National LEV program in lieu of state Section 177 Programs. These issues include the duration of the OTC State commitments, the instruments and process through which the OTC States will commit to the program, and the substantive details of their commitments.

EPA is also proposing resolutions of several other outstanding structural details of the National LEV program. These provisions include the timing of OTC State and auto manufacturer opt-ins to the National LEV program, incentives for the parties to keep their commitments to the National LEV program and conditions under which OTC States and manufacturers could exit the program (''offramps''), and the start date of the National LEV program.

In addition, EPA is proposing to address a number of technical issues not fully resolved in the Final Framework Rule. These include provisions relating to how the off-cycle supplemental federal test procedure would apply to National LEV vehicles, provisions to address manufacturer concerns regarding the effect of in-use fuels on National LEV vehicles, and provisions relating to banking and trading issues. EPA is soliciting comment solely on the issues raised in this notice and any closely related elements of the final rule that would need to be modified in accordance with today's proposals. Except to the extent that resolution of an issue raised in this notice would necessitate modifications of the Final Framework Rule, EPA is not reopening that final rule for further public comment.[5]

## III. National LEV Start Date

Although EPA had proposed model year MY1997 as the start date for National LEV,[6] in the Final Framework Rule EPA used MY1997 only as a placeholder for the start date of National LEV. EPA noted that MY1997 was no longer a reasonable start date due to changes in circumstances after the proposal. Today EPA proposes that the National LEV program start in MY1999. This would still produce VOC and $NO_X$ emissions reductions from National LEV that are equivalent to or exceed the emissions reductions that would occur in the OTR in the absence of National LEV, as discussed below in section IV.

As initially proposed by the manufacturers and negotiated with the OTC States, National LEV was designed to begin in MY1997. Thus, EPA used MY1997 as the program start date in modeling the volatile organic compound (VOC) and nitrogen oxide ($NO_X$) emissions reductions from National LEV and in finding that those reductions were equivalent to or greater than the emissions reductions expected from OTC LEV, assuming that OTC LEV was implemented by the OTC States by the date required under the OTC LEV state implementation program (SIP) call (i.e., all OTC States were to have state LEV programs effective in MY1999). In addition, the MOUs initialed by the OTC States and the manufacturers assumed a program start date of MY1997. However, as EPA noted in the Final Framework Rule, changed circumstances have since made a National LEV start date of MY1997 unrealistic. Thus, in the Final Framework Rule, EPA used MY1997 as a placeholder for the start date for National LEV, but noted that it would take comment on a realistic start date at a later time.

Several factors make a National LEV start date of MY1997 unrealistic. Given the delays that have occurred in reaching agreement between the manufacturers and the OTC States, and the resulting delays in the National LEV rulemaking, manufacturers are unlikely to be able to opt into National LEV prior to late in calendar year 1997. By then, manufacturers will have already completed EPA certification and agreements with suppliers for the MY1998 vehicles. A MY1997 start date would effectively require manufacturers to begin the program with debits for MY1997 and probably for MY1998 as

[4] See Docket No. A–95–26, IV–G–31 and IV–G–34.

[5] The supplemental final rule will resolve the issues raised in this SNPRM, the issues that were raised in the NPRM and not resolved in the Final Framework Rule, and any closely related elements of the Final Framework Rule that would need to be modified in accordance with today's proposal. The reader should be aware that, although the CAA does not require publication of proposed regulatory text, EPA has included the proposed regulatory text for most, but not all, of the proposed program elements. Also, for some provisions of the Final Framework Rule where EPA is not proposing a change in the language but is merely reordering the provisions, EPA has not reproduced those provisions here. In particular, please note that EPA is not proposing to modify or drop 40 CFR 86.1705(g)(5) in the existing final regulations. While a new provision in today's proposed regulations is designated § 86.1705(g)(5), the existing provision will be renumbered in the supplemental final rule.

[6] 60 FR 52746 (Oct. 10, 1995).

well, and then make up those debits over the next few model years. EPA does not believe it is reasonable to have the National LEV program start with some manufacturers having debits from the beginning, which will be difficult to erase as the fleet average NMOG standards become more stringent.

Moreover, the court decision vacating EPA's OTC LEV decision removed the legal requirement for National LEV to produce emissions reductions at least equivalent to those that would be produced by OTC LEV under EPA's SIP call. Nor does EPA believe there is any compelling practical need to begin National LEV effective MY1997. Because many of the OTC States will not have Section 177 Programs in place effective MY1999, and there is no longer a SIP call requiring such programs, a MY1997 start date for National LEV is not necessary to produce a quantity of emissions reductions equivalent to or greater than those that would be produced in the absence of National LEV through the alternative approach of individual OTC State adoption of Section 177 Programs. Even if National LEV begins in MY1999, the program will still produce emissions benefits in the OTR at least equivalent to and likely significantly greater than the alternative, as well as producing substantial additional emissions reductions for the rest of the country.

EPA is proposing that National LEV start with MY1999. All requirements set forth in the Final Framework Rule for MY1997 and MY1998 would be dropped. National LEV would start in MY1999 with all the requirements set forth in the Final Framework Rule for MY1999 (e.g., non-methane organic gas (NMOG) average of 0.148 grams/mile for light-duty vehicles and light light-duty trucks (0–3750 loaded vehicle weight (LVW)) in the OTR). In proposing a start date of MY1999, EPA is proposing to drop the first two years of the National LEV program set forth in the Final Framework Rule—it is not proposing that the entire program be delayed two years. Thus, the 2001 nationwide NMOG fleet average of 0.075 g/mi for light-duty vehicles and light light-duty trucks (0–3750 LVW) would not be changed. EPA has not included in today's notice proposed new regulatory language to reflect this proposed start date due to the straightforward nature of the necessary changes to the regulations.[7]

EPA is also taking comment on allowing manufacturers to sell California-certified vehicles instead of National LEV vehicles throughout the Northeast Trading Region (NTR) for MY1999 and MY2000. Manufacturers are concerned that they would have insufficient time to produce and certify National LEV vehicles for these two model years given the likely effective date of the National LEV program and their typical production planning cycles, which call for determining models to be produced and arranging for parts with suppliers in advance of actual vehicle production. Allowing manufacturers to increase their production of California-certified vehicles and sell them throughout the NTR could help manufacturers meet the National LEV fleet average NMOG standards for these two model years. To date, EPA has required manufacturers to certify to federal National LEV standards and requirements, rather than accepting California-certified-vehicles alone, to ensure that all federal certification requirements are met. While National LEV harmonizes most of the elements of the federal and California motor vehicle programs, certain additional elements of the federal program would not necessarily be met by California-certified vehicles.

## IV. National LEV Will Produce Larger VOC and $NO_X$ Emission Reductions in the OTR Compared to OTC State Adopted Section 177 Programs

In the Final Framework Rule, EPA found that the National LEV program would provide greater emission reductions than those from OTC LEV (which is equivalent to state-by-state adoption of the CAL LEV program throughout the OTR). See 62 FR 31224. EPA assumed a start date of MY1997 for the National LEV program and MY1999 for the state Section 177 Programs. EPA noted at that time that it would update the modeling of benefits in the OTR to reflect realistic start date assumptions. Since the MY2001 introduction of National LEV vehicles nationwide remains unaffected by today's proposal, National LEV will continue to provide substantial emission reductions to the 37 states outside the OTR (''37 States''). EPA's modeling includes nationwide emissions inventories as well (included in Docket A–95–26).

Using realistic start dates, EPA's modeling shows that National LEV would produce larger VOC and $NO_x$ emission reductions in the OTR than would Section 177 Programs in the OTR. This modeling is based on National LEV starting in MY1999, which EPA is proposing today, and on state Section 177 Programs going into effect as provided in the current state regulations. EPA's modeling includes a sensitivity analysis that shows National LEV would produce greater emission reductions than state Section 177 Programs even if all OTC States adopted Section 177 Programs as quickly as is realistically possible, given their current status.

EPA's updated analysis more accurately reflects expected reductions from OTC State Section 177 Programs than did the analysis described in the Final Framework Rule. EPA's previous modeling assumed that all of the OTC States had Section 177 Programs in effect for MY1999 and later. Given the two-year lead time requirement for such adoption, as specified in section 177 of the Clean Air Act, it is impossible for all OTC States to have a Section 177 Program in place for MY1999. In fact, only six states have adopted a Section 177 Program as of July 1, 1997: New York, Massachusetts, Rhode Island, Connecticut, New Jersey, and Vermont. While other OTC States are contemplating adoption of a Section 177 Program, the earliest any such adoption could become enforceable is MY2000. EPA's analysis does not assume that any other OTC State will implement a Section 177 Program. Therefore, for purposes of modeling emission benefits, EPA is capturing the current level of CAL LEV adoption in the OTR. EPA believes that this realistic assumption is the proper comparison to National LEV since legally, individual state adoption is the only manner in which California vehicles can be required in the Northeast.

EPA's modeling shows that National LEV would achieve greater emission reductions in the OTR than individual OTC State Section 177 Programs. The emission levels are listed in the table below. The modeling is based on National LEV starting in MY1999 in the OTR and MY2001 in the rest of the country. For the OTC State Section 177 Program case, EPA included only those OTC States that have adopted the CAL LEV program and will have an enforceable state program as of July 1, 1997. These states and their program start dates are New York (MY1996), Massachusetts (MY1996), Rhode Island (MY1999), Connecticut (MY1998), Vermont (MY1999), and New Jersey (MY1999). All other states would receive Federal Tier 1 vehicles. EPA did

[7] The sections in the Final Framework Rule regulations that would need to be modified to account for a start date of MY1999 include 40 CFR 86.097–1, 86.101, 86.1701–97, 86.1705–97, 86.1708–97, 86.1709–97, and 86.1710–97. In addition, section titles would need to be changed in some sections, such as 40 CFR 86.602–97, 86.1003–97, 86.1012–97, and all subpart R sections. EPA is taking comment on other changes to the Final Framework Rule regulations that need to be made to account for the change in start dates for the National LEV program.

not include existing OTC State zero emission vehicle (ZEV) sales mandates in either of its modeling runs since these mandates are not affected by the National LEV rule. ZEV sales mandates would thus have similar effects on emission levels in both modeling cases and would not affect the relative emissions benefits of National LEV compared to those of OTC State Section 177 Programs.

EPA believes its current modeling makes the appropriate assumptions and correctly estimates a realistic level of OTC State Section 177 Programs. However, to test its assumptions, EPA also ran a sensitivity analysis assuming that the seven OTC States without a Section 177 Program in place as of July 1, 1997 had adopted the program effective in MY2000, the earliest time a state that had not yet adopted a Section 177 Program could legally enforce such a program, given the two year lead time requirement in section 177 of the Act. This analysis showed that, even with all 13 OTC States having a Section 177 Program in place at the earliest possible times, National LEV still provided greater emission reductions in the Northeast.

TABLE 1.—OZONE SEASON WEEKDAY EMISSIONS FOR HIGHWAY VEHICLES IN THE OTR

[Tons/day]

| Year | Pollutant | OTC state CAL LEV | National LEV |
|---|---|---|---|
| 2005 | NMOG | 1,573 | 1,499 |
| | $NO_X$ | 2,526 | 2,403 |
| 2007 | NMOG | 1,480 | 1,366 |
| | $NO_X$ | 2,427 | 2,226 |
| 2015 | NMOG | 1,386 | 1,148 |
| | $NO_X$ | 2,367 | 1,899 |

## V. OTC State Commitments

### *A. Duration of OTC State Commitments*

EPA is proposing that the OTC States would commit to the National LEV program until MY2006. This means that the OTC States would commit to accept manufacturers' compliance with National LEV (or equally or more stringent mandatory federal standards) as an alternative to compliance with a state Section 177 Program through MY2005. The length of the auto manufacturers' commitment was set in the Final Framework Rule. Under that rule, manufacturers that opt into the program would be bound to comply with National LEV until the first model year that manufacturers are subject to a mandatory federal tailpipe emissions program at least as stringent as the National LEV program with respect to NMOG, $NO_X$ and carbon monoxide (CO) exhaust emissions (''Tier 2 standards''). Under section 202(b)(1)(c) of the Clean Air Act, EPA could not mandate such standards prior to MY2004. Thus, the manufacturers' commitment to National LEV lasts at least until MY2004 and could last longer.

The proposed duration of the OTC State commitments differs slightly from the duration specified in the initialed MOUs. The initialed MOUs provide that the auto manufacturers' and the states' commitments to the program would end at the same time. Under the MOU approach, the auto manufacturers' and the states' commitments would last through MY2003 and possibly through MY2005, depending on whether, by January 1, 2001, EPA had promulgated a final rule mandating Tier 2 standards at least as stringent as National LEV and effective in MY2004, MY2005, or MY2006. If EPA did not issue the specified regulations on time, then National LEV would end with MY2003 and, starting in MY2004, in any state where California or OTC LEV standards were not in place, the applicable standards for manufacturers would revert back to the federal Tier 1 standards.

In the Final Framework Rule, EPA did not accept the MOU provisions for setting the duration of the National LEV program. As it explained fully in that final rule, EPA rejected the MOU provisions because it is unacceptable to set up a program that has the country take a step backward environmentally if the Agency fails to act by a specified deadline. Instead, under the Final Framework Rule, the auto manufacturers' commitment to National LEV would continue until a mandatory national tailpipe emissions program that is at least equivalent in stringency to the National LEV program is in effect. Once EPA promulgates such a mandatory tailpipe emissions program, the manufacturers' obligation under the National LEV program would end in the first model year that the mandatory program is at least as stringent on a fleet wide basis as National LEV. Under section 202(b)(1)(C) of the Clean Air Act, this cannot occur until MY2004.

Today's proposal attempts to be as faithful to the OTC States' and auto manufacturers' intent regarding the duration of state commitments to National LEV as is possible, given that EPA did not accept the MOU provision that would have put the country back to Tier 1 if EPA failed to issue Tier 2 standards by a certain date. The MOU approach to the duration of the OTC State commitments indicates that the OTC States are willing to commit to National LEV through MY2005, if they are assured that they would continue to receive vehicles meeting LEV stringency or better standards (on average). The Final Framework Rule provisions for the duration of the auto manufacturers' commitment provides such assurance. Thus, EPA's proposed approach to duration of the OTC State commitments would not bind the states beyond what they have indicated is acceptable. Moreover, under the MOU approach to the duration of the OTC State commitments, under no circumstances would the states be bound beyond MY2005, so the manufacturers could not have expected the OTC State commitments to extend further.

EPA believes this approach is also fair to the manufacturers. It gives them the maximum stability (both in terms of state LEV programs and nationwide tailpipe standards) that they could have hoped to have achieved under the MOU. Admittedly, the manufacturers' commitment to National LEV may last longer than the OTC States' commitment (it could also end earlier), but only if the National LEV standards remain effective longer than currently anticipated. Manufacturers thus would get more stability of nationwide tailpipe standards than they had bargained for, which does not provide justification for requiring states to extend their commitments beyond MY2005.

*B. Timing of OTC State Commitments, Manufacturer Opt-Ins, and EPA Finding National LEV in Effect*

EPA is proposing a process for the OTC States and the manufacturers to opt into the National LEV program and for EPA to find the program in effect that would allow the program to go into effect without requiring the parties to sign an MOU. As discussed in the notice of proposed rulemaking (NPRM) (60 FR 52742), to implement the program promptly upon completion of the National LEV rulemaking, there needs to be a deadline for EPA to assess whether the National LEV program is in effect. Also, EPA must establish deadlines for the OTC States and manufacturers to opt into National LEV in advance of the deadline for EPA's determination.

EPA is proposing the following timing for the OTC States and manufacturers to opt into National LEV, and for EPA to find the program in effect. Because National LEV needs to be in place as soon as possible to ensure that it is available for MY1999, the following deadlines are based on the date of signature of the supplemental final rule.[8] Seventy-five days from signature of the final supplemental rule, EPA would be required to determine whether the National LEV program was in effect (see section V.C.3 below for the criteria for finding National LEV in effect). This finding would be based on the OTC States' initial opt-in packages from their Governors and state environmental commissioners or secretaries (discussed below in section V.C) that were submitted no later than 45 days from the date of signature of the final supplemental rule and on the manufacturers' opt-ins submitted no later than 60 days from signature of the final supplemental rule. If EPA were to find National LEV in effect, all parties would be bound by their commitments to the program. While any party that missed its deadline for opt-in would not be barred from submitting a late opt-in, EPA would only be required to consider timely opt-ins in determining whether National LEV is in effect. Moreover, given the very short timeframe for the opt-in process and the fact that some parties may be reluctant to opt in before they know whether others will do so, a late opt-in is likely to jeopardize the start-up of the program.

EPA recognizes that the proposed deadlines are quite tight, and will require swift action by the parties. Given both the manufacturers' production schedules and the earliest plausible signature date for the supplemental final rule, any extension of the proposed schedule may jeopardize the MY1999 start date and, thus, the entire program. Nevertheless, EPA requests comment on the proposed schedule and the viable start date for the program.

EPA is proposing that, after the initial opt-ins and an EPA finding that the program is in effect, the OTC States would generally have one year from the date of the in-effect finding to submit the final portion of their opt-ins, which would be a SIP revision committing the state to the National LEV program and allowing manufacturers to comply with National LEV as an alternative to a state Section 177 Program, as described in more detail in section V.C.4 below. EPA is aware that a few states, specifically Delaware, New Hampshire, Virginia and the District of Columbia, have particular circumstances related to their state rulemaking processes that make a one year deadline unrealistic. Thus, EPA proposes that for these states, the deadlines would be eighteen months from the date of the in-effect finding. The consequence of a state missing its deadline for submission of its SIP revision committing to National LEV would be that the manufacturers would have the opportunity to opt out of the program. See section VI below for further discussion of offramps.

*C. OTC State Commitments, Manufacturer Opt-Ins, and EPA's Finding That National LEV is in Effect*

This section describes EPA's proposed process for the OTC States and the manufacturers to commit to the National LEV program and for EPA to find the program in effect. This includes how the OTC States would commit to the program, the elements of their commitments, the permissible conditions on OTC State and manufacturer opt-ins, and the criteria that EPA would use to find the program in effect.

1. Initial Opt-In by OTC States

EPA proposes that the OTC States would commit to National LEV in two steps, the first of which would be an opt-in package from each state's Governor and environmental commissioner, indicating the OTC State's intent to opt into National LEV. The second step would be a SIP revision incorporating the OTC State's commitment to National LEV in state regulations, which EPA would approve into the federally enforceable SIP.

EPA proposes that, within 45 days of signature of the supplemental final rule, the Governor (or Mayor, in the District of Columbia) would submit to EPA an executive order (or, for some states, a letter) committing the OTC State to the National LEV program. The executive order (or letter) would contain three main elements. First, it would state that its purpose is to opt the state into National LEV. Second, it would state that the Governor is forwarding a letter signed by the head of the state environmental agency (or other appropriate agency or department), which specifies the details of the state's commitment to the National LEV program. Third, it would state that the Governor has directed the head of the state environmental agency to take the necessary steps to adopt regulations and submit a SIP revision committing the state to National LEV in accordance with the requirements of the National LEV regulations. In addition, OTC States with existing ZEV mandates[9] may add language confirming that the opt-in will not affect the state's requirements pertaining to ZEVs.

The Governor's executive order (or letter) would enclose a letter signed by the state environmental commissioner or secretary of the appropriate state department (''commissioner's letter''), which would specify the details of the state's commitment to National LEV. Alternatively, if an OTC State has proposed regulations meeting the requirements for a SIP revision specified below, the state may substitute the proposed regulations for the portions of the commissioner's letter for which they are duplicative. In that case, the Governor would send to EPA the Governor's executive order (or letter), the proposed regulations, and a letter from the commissioner, which would contain the elements specified below that were not included in the proposed regulations.

EPA is proposing that the commissioner's letter would include the following elements. First, it would indicate that National LEV would achieve reductions of VOC and $NO_x$ emissions equivalent to or greater than the reductions that would be achieved through state adopted Section 177 Programs in the OTR. Second, it would

[8] EPA would provide directly affected parties actual notice and make copies of the final rule available within a week of signature.

[9] ZEV mandates are those state regulations or other laws that impose (or purport to impose) obligations on auto manufacturers to produce or sell a certain number or percentage of ZEVs. EPA is proposing that any OTC State with a ZEV mandate that was adopted prior to the OTC State's opt-in to National LEV would be treated as a state with an existing ZEV mandate. EPA takes comment on whether another cut-off date would be appropriate in place of the date of the state's opt-in, including: September 15, 1996; the signature date of the Final Framework Rule; the signature date of the final supplemental rule; and the date of EPA's finding that National LEV is in effect.

indicate that the state intends National LEV to be the state's new motor vehicle emissions control program. Third, it would state that for the duration of the state's participation in National LEV, the state will accept National LEV or mandatory federal standards of at least equivalent stringency as a compliance alternative to any state Section 177 Program. A state Section 177 Program is any regulation or other law, except a ZEV mandate, adopted by an OTC State in accordance with section 177 and which is applicable to passenger cars, light duty trucks up through 6,000 pounds GVWR, and/or medium-duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these vehicle categories are defined under the California regulations. (This commitment would not restrict states from adopting and implementing requirements under section 177 for heavy-duty trucks and engines and diesel-powered vehicles between 6,001 and 14,000 pounds GVWR.) The letter would further state that the state's participation in National LEV extends until MY2006, except as provided in the National LEV regulations' provisions for the duration of the OTC State commitments, including provisions for state offramps. The offramps would allow the OTC States to exit National LEV if an auto manufacturer decided to exit the program. OTC States without existing ZEV mandate provisions would add a statement that the state accepts National LEV as a compliance alternative to any ZEV mandates. OTC States with existing ZEV mandate provisions would add a statement that their acceptance of National LEV as a compliance alternative for state Section 177 Programs does not include or have any effect on the OTC State's ZEV mandates.

Fourth, the commissioner's letter would include both an explicit recognition that the manufacturers are opting into National LEV in reliance on the OTC States' opt-ins, and a recognition that the commitments in the initial OTC State opt-in package have not yet gone through the state rulemaking process to be incorporated into state regulations, so they do not yet have the force of law; in addition, the letter would recognize that the state's executive branch must comply with any laws passed by the state legislature that might affect the state's commitment. Fifth, the commissioner's letter would include an acknowledgment that, if a manufacturer were to opt out of National LEV pursuant to the opt-out provisions in the National LEV regulations, the transition from the National LEV requirements to any state Section 177 Program or ZEV mandate would be governed by the National LEV regulations. Sixth, similar to the manufacturers' opt-in letters, the commissioner's letter would state that the state supports the legitimacy of the National LEV program and EPA's authority to promulgate the National LEV regulations.

As it stated in the NPRM for National LEV (60 FR 52740), EPA believes that the decision regarding adoption of ZEV mandates by OTC States must be left up to each individual OTC State, to the extent permitted under section 177. The OTC States have indicated that they support certain commitments regarding ZEV mandates by including those provisions in the MOU voted on by the OTC and initialed by the OTC pursuant to the vote. EPA is proposing in the alternative that the OTC States without existing ZEV mandate provisions would either have to include a statement in the commissioner's letter indicating that the state intends to forbear from adopting a ZEV mandate effective before MY2006 or would have to include a statement that the state will forbear from adopting such a provision. The draft MOU initialed by the OTC contains the ''intends to'' language, while the draft MOU initialed by the manufacturers uses the ''will'' language.

EPA is also taking comment on whether those OTC States that have not adopted a Section 177 Program at the time of signature of the supplemental final rule should include in the commissioner's letter a statement that the state intends to or will forbear from adopting a Section 177 Program effective before MY2006. The draft MOU initialed by the manufacturers included a statement that certain OTC States would forbear from adopting such ''backstop'' Section 177 Programs,[10] while the draft MOU initialed by the OTC States did not include any statement regarding adoption of such backstop programs.

Finally, EPA is proposing that the commissioner's letter may include a statement that the state's opt-in to National LEV is conditioned on all of the motor vehicle manufacturers listed in the National LEV regulations opting into National LEV pursuant to the National LEV regulations and on EPA finding National LEV to be in effect. EPA is further proposing that, as with the manufacturers' opt-ins, no conditions other than those specified in the regulations may be placed on any of the state opt-in instruments (the Governor's executive order (or letter), the commissioner's letter, or the SIP revision).

EPA is taking comment on whether the regulations should allow an OTC State to condition its opt-in on signature of an acceptable independent agreement with the manufacturers to promote advanced technology vehicles (ATVs). Although EPA agrees that advancing technology is an important policy goal and EPA believes that the National LEV program could be a part of an agreement that would provide important opportunities to promote ATVs, as proposed, the regulatory portion of the National LEV program does not address ATVs. EPA also recognizes that the manufacturers have indicated their belief that any agreement on ATVs should only be addressed as part of a larger MOU committing to National LEV. Some of the OTC States, however, have indicated a continuing interest in an ATV agreement and the desire to condition their opt-ins on the signature of an ATV agreement. Such an agreement could be comprehensive, as contemplated by the agreement contained in the MOU. Or, it could be a smaller agreement between a particular state or states and a particular manufacturer or manufacturers. EPA believes that if such a condition were allowed, it would have to be met prior to EPA finding that National LEV was in effect. Under the proposed timetable, this would allow manufacturers and states only 30 days to conclude such an agreement after the due date for the OTC States' initial opt-in packages. Even if manufacturers were amenable to some type of an ATV agreement (or agreements with individual states), conditioning an opt-in on an undefined ATV agreement might dissuade manufacturers from opting in. Therefore, EPA believes that the questions of whether there will be any ATV agreements and if so, what they will contain, are best determined between the auto manufacturers and the OTC States prior to the deadline for state opt-ins.

In the proposed regulations, EPA is proposing specific language for each element of the OTC States' opt-ins to be included in the Governor's executive order (or letter), the commissioner's letter, and the SIP revision. EPA is also taking comment on whether it is necessary for EPA to specify language or whether it would be sufficient for the National LEV regulations to identify the elements that must be in the OTC States' opt-in documents without specifying exact language. Although it is somewhat unusual for EPA to identify specific

[10] ''Backstop'' Section 177 Programs are programs that allow National LEV as a compliance alternative to the Section 177 Program requirements.

language for state submissions, EPA believes this may be an appropriate case to do so. Because the OTC States and manufacturers are signing up for a voluntary program and are unlikely to sign an MOU, using specified language would be useful to ensure that they sign up to the same program. Otherwise, the opt-ins might not represent agreement on the terms and conditions of the voluntary National LEV program. In addition, as discussed further below, EPA proposes to find National LEV in effect without providing for additional notice-and-comment on whether the conditions are met for finding National LEV in effect. It is more appropriate to proceed without additional rulemaking if the Agency's in-effect finding is essentially a nondiscretionary action based on clear factual determinations. If EPA must use its discretion to determine whether a state has adequately committed to National LEV, that might require further rulemaking and substantially delay implementation of the program. However, if the OTC States use the language specified in the regulations, which EPA will have determined to be adequate through a notice-and-comment rulemaking, EPA could find National LEV in effect on that basis.

EPA recognizes that some states may need to use language for certain elements of the opt-in that deviates in a few respects from the language proposed today, due to the requirements of different states' individual administrative laws and rulemaking procedures. EPA requests that any OTC States that have concerns about using the proposed language notify EPA to that effect in comments on this proposal. EPA requests that any such comments include alternate suggested language for the specified elements of the opt-in, and that a state make the minimum adjustments to the language necessary to allow the state to opt into National LEV. EPA proposes to provide in the final rule alternate approved specific language for specific states, as necessary to account for individual states' particular needs. Any such language would still need to address each of the opt-in elements and commit the state adequately to the National LEV program. EPA also recognizes that a state may wish to include background information, especially in the Governor's executive order (or letter). This would be permissible under EPA's proposed regulations, providing that the additional information did not add conditions to the state's opt-in.

2. Manufacturer Opt-Ins

EPA is proposing that motor vehicle manufacturers' opt-ins to National LEV would be due within 60 days from signature of the final rule. As provided in the Final Framework Rule, a manufacturer would opt into National LEV by submitting a written notification signed by the Vice President for Environmental Affairs (or a company official of at least equivalent authority who is authorized to bind the company to the National LEV program) that unambiguously and unconditionally states that the manufacturer is opting into the program, subject only to conditions expressly contemplated by the regulations. See 40 CFR 86.1705(c)(2). EPA is proposing that the only permissible conditions in a manufacturer's opt-in notification would be that all of the OTC States opt into National LEV pursuant to the National LEV regulations and that EPA find the program to be in effect. These conditions parallel the proposed permissible conditions described above for the OTC States' opt-ins.

3. EPA Finding That National LEV is in Effect

The OTC States' and the auto manufacturers' opt-ins would become effective upon EPA's receipt of the opt-in notification or, if the opt-in were conditioned, upon the satisfaction of that condition. Under today's proposal, EPA would find National LEV in effect if each OTC State and each listed manufacturer were to submit an opt-in notification that complied with the requirements for opt-ins, and all conditions on any of those opt-ins had been satisfied (or would be satisfied upon EPA finding National LEV in effect). EPA is also taking comment on whether the Agency should be able to find National LEV in effect if each of the listed manufacturers were to submit an opt-in notification that complied with the requirements for opt-ins, each of the opt-in notifications submitted by an OTC State complied with the requirements for opt-ins, and any conditions placed upon any of the opt-ins were satisfied, even if fewer than all OTC States opted into National LEV. EPA believes that National LEV should be a national program—effective in all states but California. This would provide the OTR with emissions reductions greater than what could be achieved without National LEV and would simplify distribution and other aspects of the sale of motor vehicles. Moreover, the manufacturers have stated that they are not willing to opt into National LEV unless each and every OTC State opts into National LEV. However, if the OTC States and auto manufacturers are willing to participate in a National LEV program even if all OTC States do not opt-in, EPA will not stand in the way of National LEV going into effect. Once EPA finds National LEV in effect, the manufacturers would be subject to the National LEV requirements for new motor vehicles for the duration of the program, and the OTC States would be committed to participate in the National LEV program for the duration of their commitments, as discussed above in section V.A.

While the OTC States' SIP revisions are a necessary component of their commitments to National LEV, EPA is proposing to make the finding as to whether National LEV is in effect before the OTC States' SIP revisions are due. Through the executive order (or letter), the Governor of each state will have opted into National LEV and started the process for submission of an approvable SIP revision. Also, as discussed further below, EPA is proposing that an OTC State's failure to submit the SIP revision within the time provided for submission would give manufacturers an opportunity to opt out of the National LEV program. Together, this high level directive for action and the consequences of a failure to conclude the action provide substantial assurance that the OTC States will submit their SIP revisions within the specified time.

EPA would publish the finding that National LEV is in effect in the **Federal Register**, but the Agency would not need to go through additional rulemaking to make this determination. In the Final Framework Rule, EPA stated that further Agency rulemaking to find National LEV in effect would be unnecessary because EPA would establish the criteria for the finding through notice-and-comment rulemaking, and EPA's finding that the criteria are satisfied would be an easily verified objective determination. See 62 FR 31226 (June 6, 1997). As discussed above, to find National LEV in effect, EPA would have to determine that the OTC States and the manufacturers had submitted opt-in notifications that met the requirements specified in the regulations and that any conditions on those opt-ins had been satisfied. EPA established most of the specifics of the manufacturers' opt-in notifications in the Final Framework Rule after taking comment on those issues in the NPRM. In today's SNPRM, EPA is taking comment on additional details of manufacturer opt-in notifications and the specifics of the OTC States' opt-in notifications, which EPA will finalize in the supplemental final rule. Thus, the

public will have had full opportunity to comment on the adequacy of the elements of the manufacturers' and OTC States' opt-ins and the language provided for those opt-ins. As with the manufacturers' opt-ins, determining whether a state has used the specified language without adding any conditions is a simple, objective determination, which would not require further rulemaking. Similarly, if OTC States or manufacturers conditioned their opt-ins on either all manufacturers or all OTC States opting into National LEV, determining whether these conditions were satisfied would be a simple factual inquiry involving no discretion on the part of EPA. Thus, EPA proposes to find that National LEV is in effect without conducting further rulemaking if the Agency determines that it has received opt-in notifications from each OTC State and listed manufacturer that include the specified elements in approved language without qualifications and the Agency determines that all conditions on those opt-ins have been satisfied.

4. SIP Revisions

EPA proposes that within one year of the date of EPA's finding that National LEV is in effect, the OTC States would complete the second phase of their commitments to National LEV by submitting SIP revisions to EPA incorporating their commitments (''National LEV SIP revisions'').[11] EPA proposes that the SIP revisions would contain the following elements incorporated in enforceable state regulations. The first regulatory provision would commit that, for the duration of the state's participation in National LEV, the manufacturers may comply with National LEV or mandatory federal standards of at least equivalent stringency as a compliance alternative to any state Section 177 Program (which is any regulation or other law, except a ZEV mandate, adopted by an OTC State in accordance with section 177 and which is applicable to passenger cars, light duty trucks up through 6,000 pounds GVWR, and medium-duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these vehicle categories are defined under the California regulations).[12] This provision would not restrict states from adopting and implementing requirements under section 177 for heavy-duty trucks and engines and diesel-powered vehicles between 6,001 and 14,000 pounds GVWR. The regulations would also commit the state to participate in National LEV until MY2006, except as provided in the National LEV regulatory provisions for the duration of the OTC State commitments, including provisions for state offramps. States that did not have an existing ZEV mandate (see n. 9 above) would additionally provide that manufacturers may comply with National LEV as a compliance alternative to any ZEV mandates for the duration of the state's participation in National LEV. The second element of the state regulations would explicitly acknowledge that, if a manufacturer were to opt out of National LEV pursuant to the opt-out provisions in the National LEV regulations, the transition from the National LEV requirements to any state Section 177 Program or ZEV mandate (for states without existing ZEV mandates) would be governed by the National LEV regulations, thereby incorporating these National LEV provisions by reference into state law.

The SIP submission to EPA would include state regulations containing the elements discussed above, and a transmittal letter or similar document from the state commissioner forwarding those regulations. EPA proposes that three additional elements of the SIP commitment may be included either in the transmittal letter or the state regulations. First, the state would commit to support National LEV as an acceptable alternative to state Section 177 Programs. Second, the state would recognize that its commitment to National LEV is necessary to ensure that National LEV remain in effect. Third, the state would state that it is submitting the SIP revision to EPA in accordance with the National LEV regulations.

EPA is further proposing that the provisions of the OTC States' commitments relating to ZEV mandates should also be included in the SIP revision. EPA is proposing in the alternative that in the transmittal letter portion of the SIP submission to EPA, each OTC State without an existing ZEV mandate (see n. 9 above) would have to state either that, for the duration of the state's participation in National LEV, the state intends to forbear from adopting any ZEV mandate provisions effective before MY2006, or the state will forbear from adopting such provisions. EPA is taking comment on whether this commitment instead should be incorporated in the state's regulations.

Finally, EPA is also taking comment on whether those OTC States that have not adopted a Section 177 Program at the time of signature of the supplemental final rule should include in the transmittal letter for the SIP revision or in the state regulations a statement that the state intends to or will forbear from adopting a Section 177 Program effective before MY2006. As noted above, the draft MOU initialed by the manufacturers included a statement that certain OTC States would forbear from adopting such backstop Section 177 Programs, while the draft MOU initialed by the OTC States did not include any comparable statement.

As with the finding that National LEV is in effect, EPA is proposing that the Agency could approve SIP revisions committing to the National LEV program without further rulemaking, as long as the revisions include the language specified in the regulations without adding conditions and meet the CAA requirements for approvable SIP submissions. In this notice, EPA is providing full opportunity for public comment on the language that the states would use in their SIP revisions. Thus, in reviewing a SIP submittal, EPA would only have to determine whether the submittal included the specified language without additional conditions, and whether it met the statutory criteria for approvable SIP submissions, as laid out in sections 110(a)(2) and 110(l) of the CAA. Section 110(a)(2), in relevant part, specifies that the state must have provided public notice and a hearing on the SIP provisions and the submission must provide necessary assurances that the state will have adequate personnel, funding and authority under state law to carry out the provisions. Section 110(l) (discussed in more detail below) provides that SIP revisions must not interfere with attainment or any other applicable requirement.

In this case, these requirements for EPA's approval are easily verified objective criteria. They would leave EPA little discretion in deciding whether to approve the SIP revision, and consequently would remove any benefits to be derived from conducting notice-and-comment rulemaking on each approval. Determining whether the language of the SIP submittal tracks the language provided in the final regulations and whether the state has substantively qualified or conditioned that language through modifications or additions is a straightforward,

[11] See section V.B above for discussion of the proposed extended deadline for a few specified states.

[12] OTC States that had Section 177 Programs at the time of opt-in would need to modify their existing regulations in accordance with this provision. EPA is also taking comment on whether by some earlier date (perhaps June 1, 1998), OTC States with Section 177 Programs at the time of opt-in would have to take whatever actions would be necessary to ensure that manufacturers complying with National LEV in MY1999 would not have to comply with the state Section 177 Program for MY1999.

essentially ministerial task. This is also true for assessing whether the state has provided notice and a public hearing on the SIP submission. Because National LEV is a federal program, the state needs no personnel or funding to carry it out, so there is nothing related to the requirement for adequate personnel and funding for EPA to evaluate. For a state with existing regulations requiring compliance with a state Section 177 Program, EPA would merely have to determine whether the state had modified its regulations to include the language in the National LEV regulations to accept National LEV as a compliance alternative for the specified duration of the state commitment, as well as the additional provisions specified above. Again, this is a very simple, objective assessment, requiring no exercise of discretion. Finally, EPA has determined that National LEV would provide reductions in the OTR equivalent to or greater than OTC State Section 177 Programs in the OTR (see section IV), so that a state commitment to National LEV would not interfere with attainment or any other Act requirement. Because the satisfaction of the criteria for approval of the state SIP revisions is so clear as to be virtually self-executing, EPA believes that conducting further notice-and-comment rulemaking on whether the criteria were satisfied for each individual SIP revision would produce additional delay while serving no purpose.

Incorporating the OTC States' commitments to National LEV in state regulations approved into the SIPs will substantially enhance the stability of the National LEV program and support giving states credit for SIP purposes for emissions reductions from National LEV. A SIP revision would clearly indicate a state's commitment to National LEV and would reiterate the state executive branch's support for the National LEV program. More importantly, an approved SIP revision is federal law and hence has binding legal effect. Violation of a commitment to National LEV contained in a SIP is enforceable as a violation of applicable federal law.

The SIP revision would provide that the state commits to accept National LEV or mandatory federal standards of at least equivalent stringency as a compliance alternative to a state program under section 177 for a specified time period. If a state adopted new state law or regulations that violated this commitment in the SIP (e.g., by requiring compliance only with a state Section 177 Program), this new state law would not be valid prior to EPA action on the SIP revision incorporating the new law. Prior to such action, the new state law would be precluded by the federal law with which it conflicted (i.e., the SIP revision EPA had approved). Moreover, pursuant to section 304(a)(1) and (f), manufacturers could bring suit against the state to enforce the initial SIP commitment in court. To revise the SIP, the state would have to submit a new SIP revision and EPA would have to approve the new revision through notice and comment rulemaking. Moreover, if EPA disapproved the newly submitted SIP revision, then the new state law would continue to violate the approved SIP revision containing the state commitment to National LEV, and manufacturers could continue to enforce the initial SIP commitment in court.

EPA would be obligated under section 110(l) of the CAA to disapprove a SIP revision that violated a state's commitment to allow National LEV as a compliance alternative if EPA were to find that the SIP revision would interfere with other states' ability to attain or maintain the national ambient air quality standards (NAAQS). Specifically, section 110(l) provides that EPA must disapprove a plan revision if it ''interfere[s] with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of this Act.'' By the terms of its rulemaking, National LEV comes into and stays in effect only if all relevant states commit to allow it as a compliance alternative. If National LEV comes into effect, a number of OTC States, as well as states outside the OTR, are likely to rely on National LEV as a means of attaining and maintaining the ozone NAAQS. These states are likely to forego adoption of other control measures because they will count on reductions from National LEV to meet their attainment and maintenance obligations. In this manner, other states will be relying on each of the OTC States' commitments to National LEV. An OTC State breaking its commitment to allow National LEV as a compliance alternative could lead to the dissolution of the National LEV program, which in turn would likely deprive other states of the emission reductions from National LEV, and could thereby interfere with other states' ability to attain. As discussed above, EPA is proposing that in the SIP revisions committing to National LEV, each OTC State would explicitly recognize that the state's commitment to National LEV is necessary to ensure that the program remain in effect.

## VI. Incentives for Parties To Keep Commitments to Program

Once it comes into effect, National LEV is designed to be a stable program that will remain in effect until replaced by mandatory federal tailpipe standards of at least equivalent stringency. Manufacturers have the option, but not the requirement, to participate in National LEV. Manufacturers have indicated a willingness to opt into the program, but only if the EPA and the OTC States make certain commitments. To give the manufacturers both assurance that the commitments will be kept and recourse if they are not, EPA is proposing that the program include a few specified conditions (''offramps'') that would allow manufacturers to opt out of National LEV if EPA or the OTC States did not keep their commitments. In addition, the OTC States also need assurance that National LEV will continue to provide the benefits they anticipated when they opted into the program, both in terms of the number of manufacturers covered by the program and the level of emissions reductions that the program was designed to achieve. Thus, EPA is proposing that National LEV would also include limited offramps for the OTC States to protect against changes in anticipated emission benefits or the number of covered manufacturers. Both the manufacturers' and the OTC States' proposed offramps are structured to maximize all parties' incentives to maintain the agreed-upon program provisions and thereby to maximize the stability of National LEV over its intended duration.

In the unlikely event that any of the offramps were triggered and manufacturers or states opted out, EPA's proposed regulations set forth which requirements would apply, the timing of such requirements, the states in which they would apply, and the manufacturers that would have to comply with them. The main purpose of these provisions is to enhance the stability of the program by minimizing the incentives for EPA or the OTC States to act in a manner that would trigger an offramp. Additionally, EPA has structured the offramp provisions such that no single event automatically would end the National LEV program. EPA will continue to make National LEV available as long as one or more manufacturers and one or more OTC States wish to remain in the program. EPA recognizes, of course, that if a significant number of OTC States or manufacturers were to opt out of National LEV, after a certain point it is unlikely that the remaining parties

would choose to continue the program. However, the issue is highly unlikely to arise and if it did, it is not clear what would be the critical mass of opt-outs sufficient to end the program. Rather than deciding now how many OTC State and auto manufacturer opt outs would be significant enough to end National LEV, EPA believes it is both more appropriate and more efficient to leave that decision to the OTC States and manufacturers to decide, in the unlikely event that an offramp is triggered and significant opt-outs occur.

In the NPRM, EPA proposed that manufacturers' right to opt out of the National LEV program would be limited to two conditions. These offramps were: (1) EPA modification of a Stable Standard, except as specifically provided, and (2) an OTC State's failure to meet or keep its commitment regarding adoption or retention of a state motor vehicle program under section 177. The Final Framework Rule addressed the first offramp, which would allow manufacturers to opt out of National LEV if EPA modified a Stable Standard except as provided for under the National LEV regulations, but did not address the second offramp. This second offramp is addressed here. EPA also is proposing to add a third type of offramp related to auto manufacturers' concerns regarding the effects of using federal fuel (instead of California fuel) on emissions control systems. This is discussed in section VI.C below. In addition, EPA is proposing a fourth type of offramp based on an OTC State or another manufacturer legitimately opting out of National LEV.

*A. Offramp for Manufacturers for OTC State Violation of Commitment*

Under today's proposal, there are several ways in which an OTC State might break its commitment and thereby allow manufacturers to opt out of National LEV. These are: (1) Final action in violation of the commitment to continue to allow National LEV as a compliance alternative to a Section 177 Program or to a ZEV mandate (in those OTC States without existing ZEV mandates); (2) failure to submit a National LEV SIP revision within the timeframe set forth in the National LEV regulations; and (3) submission of an inadequate National LEV SIP revision.[13] In addition, EPA is taking comment on whether manufacturers should also be able to opt out of National LEV if an OTC State without an existing ZEV mandate adopted a ZEV mandate (even if it accepted National LEV as a compliance alternative for that requirement) and that state had either stated its intent or committed not to adopt such a mandate.[14] The discussion below addresses each of these proposed possible types of OTC State violations individually. EPA does not believe that any of these scenarios are likely to arise under the National LEV program. Nevertheless, spelling out in the regulations the consequences under each of these scenarios will provide the parties certainty regarding the worst-case outcomes, and more importantly, allows EPA to structure the consequences so as to minimize the likelihood that any of these scenarios will occur.

1. OTC State No Longer Accepts National LEV as a Compliance Alternative

The most significant way in which an OTC State could violate its commitment to National LEV would be to attempt to have a Section 177 Program that was in effect and that did not allow National LEV or mandatory federal standards of at least equivalent stringency as a compliance alternative[15] through MY2005.[16] This could happen if an OTC State accepted National LEV as a compliance alternative to a state Section 177 Program or a ZEV mandate (in an OTC State without an existing ZEV mandate) and then took final action purportedly removing those provisions from its regulations, leaving only the state Section 177 Program or ZEV mandate requirements in place. It would also happen if an OTC State took final action purportedly adopting a Section 177 Program or a ZEV mandate (in an OTC State without an existing ZEV mandate) without providing for National LEV as a compliance alternative.[17] This violation of the OTC State's commitment to National LEV attempts to directly impose a compliance burden on the manufacturers and would abandon the most fundamental element of the agreement underlying the voluntary National LEV program.

The consequences of such a violation, as proposed below, take into account the seriousness of the breach of the commitment, even though the violation would not necessarily burden the manufacturers. Once a state had adequately committed to National LEV through an approved SIP revision, even if the state were to change its regulations to disallow compliance with National LEV, the requirement would not be enforceable until EPA approved a further SIP revision incorporating the change, as discussed above in section V.C.4. Yet although the violation might not actually impose any burden on the manufacturers because it is not enforceable, manufacturers should not be bound to comply with the National LEV requirements in the violating state and should not be bound to continue in the National LEV program, as even an unenforceable Section 177 Program would create risks and uncertainties for manufacturers. Manufacturers would be at risk of having to defend against a state enforcement action. The question of whether, under any circumstances, EPA could approve a proposed state SIP revision deleting National LEV as a compliance alternative—if only by virtue of the lack of precedence for this issue—would create further uncertainty for manufacturers.

EPA is proposing that manufacturers would be able to opt out at any time after an OTC State takes final action that would require manufacturers to comply with a Section 177 Program or a ZEV mandate (in an OTC State without an existing ZEV mandate) prior to MY2006 without allowing them to comply with National LEV or mandatory federal standards of at least equivalent stringency as an alternative, even if the effective date of the state requirement would be some time in the future. The final state action would be the action promulgating the state law or regulations at issue, not the act of defending such law or regulations in litigation. Thus, a self-effectuating state law purporting to impose a Section 177 Program without including National LEV as a compliance alternative would

[13] In addition, as discussed in the following section, EPA is proposing that manufacturers may opt out if an OTC State takes a legitimate offramp.

[14] If, as discussed at n. 12 above, EPA were to set a separate date by which OTC States with Section 177 Programs had to take action to ensure that manufacturers complying with National LEV would not have to comply with the state program requirements, failure to meet such a deadline would also trigger an offramp. EPA is taking comment on what the consequences should be if such an offramp were triggered.

[15] Throughout this preamble, EPA often uses ''National LEV as a compliance alternative'' as shorthand for ''National LEV or mandatory federal standards of at least equivalent stringency as a compliance alternative.''

[16] An OTC State with a Section 177 Program that did not allow National LEV as a compliance alternative as of MY2006 or later would not be in violation of its commitment under National LEV.

[17] In addition, an OTC State with a Section 177 Program in its regulations at the time of opt-in that does not already permit manufacturers to comply with National LEV as a compliance alternative might fail to modify those existing regulations within the time-frame provided, which would be the same as the deadline for submission of the state's SIP revision. The consequences of this type of violation would differ slightly from the consequences of other types of violations that attempted to have a Section 177 Program without allowing National LEV as a compliance alternative, as noted below in n.18.

be final state action, as would final state regulations purporting to impose such a program. A state law directing the relevant state agency to change its regulations to remove National LEV as a compliance alternative would not be a final state action, but the regulations promulgated in accordance with that directive would be final state action.

EPA is proposing that, if an OTC State were to violate its commitment by purportedly disallowing National LEV as a compliance alternative, there would be both automatic consequences in the violating state and an opportunity for manufacturers to opt out of National LEV.[18] To determine the consequences in the violating state, there are two significant issues. The first issue is what are the compliance obligations of the manufacturers in the violating state. The second issue is when would the state Section 177 Program or ZEV mandate requirements apply to manufacturers. Outside of the violating state, manufacturers would continue to be subject to the National LEV requirements unless they opted out of the National LEV program.

Until the violating state's Section 177 Program or ZEV mandate requirements apply, the manufacturers' compliance obligations in that state would be governed by the terms of the National LEV regulations. EPA is proposing that, in a state that has violated its commitment by attempting to have a Section 177 Program or ZEV mandate without allowing National LEV as a compliance alternative, beginning with the next model year,[19] National LEV regulations would allow manufacturers to sell vehicles complying with Tier 1 tailpipe standards in that state and those vehicles would not be counted in determining whether the NLEV fleet average NMOG standard was met. Because model years generally run somewhat ahead of the calendar years with the same numbers, generally this will result in a near-term or immediate change in the manufacturers' compliance obligations. Until the violating state's Section 177 Program requirements applied (which might not be until MY2006), the manufacturers would only have to meet the federal Tier 1 tailpipe standards for vehicles sold in the violating state, and those vehicles would not be used to calculate the manufacturers' fleet NMOG averages.

The earliest date on which the violating state's Section 177 Program or ZEV mandate would apply would be governed by the lead time requirements in section 177 and EPA's regulations on model year at 40 CFR part 85 subpart X and in the National LEV regulations. This date would apply only for any auto manufacturer that opted out of National LEV as a result of the violating state's action (provided that it is later than the effective date of the opt-out), for any auto manufacturer that decided to comply with the violating state's requirements even though it otherwise chose to stay in National LEV, and for all manufacturers if EPA approved the violating state's program into the SIP. (As discussed below, EPA believes the violating state's refusal to allow National LEV as a compliance alternative would not otherwise be effective until MY2006. Thus, if none of these situations occurred, National LEV regulations would allow manufacturers to sell in the violating state vehicles that meet Tier 1 tailpipe standards and to exclude those vehicles from the NMOG fleet average calculation until MY2006.)

After National LEV is in effect, a change to a state regulation that deletes National LEV as a compliance alternative attempts to change the manufacturers' obligations. In that circumstance, as discussed in section VI.D below, EPA interprets section 177 to require two years of lead time from the date that the state takes final action changing its regulations (or other law) deleting National LEV as a compliance alternative regardless of when the state adopted its previous Section 177 Program. Thus, pursuant to the model year regulations at 40 CFR part 85 subpart X and those proposed here, the earliest the state Section 177 Program or ZEV mandate requirements could apply would be to engine families for which production begins after the date two calendar years from the date of the final state action. For example, if the violating state promulgated regulations purportedly removing National LEV as a compliance alternative on June 1, 2000, the earliest the state Section 177 Program or ZEV mandate requirements could apply would be to engine families that began production on or after June 1, 2002, which likely would apply to some, but not all, MY2003 vehicles. EPA is also taking comment on whether there is a way to ensure that manufacturers have at least four, rather than two, years of lead time from the date that the state takes final action changing its regulations deleting National LEV as a compliance alternative, and what the legal basis would be for such an approach.

The combined effect of the National LEV regulations allowing manufacturers to comply with Tier 1 tailpipe standards in the violating state and the requirement for two years lead time before the state Section 177 Program or ZEV mandate requirements could apply means that, if an OTC State were to violate its commitment by not allowing National LEV as a compliance alternative, manufacturers would be subject to only Tier 1 tailpipe standards (and not the NLEV NMOG average) in that state for at least two years. As a consequence, the violating state could not claim SIP credits for control of emissions from vehicles meeting anything more stringent than Tier 1 tailpipe standards during that period. EPA believes that this would provide a powerful incentive for the OTC States to uphold their commitments to accept National LEV as a compliance alternative for the specified duration.

EPA recognizes that it may take manufacturers some time to take advantage of the less stringent Tier 1 tailpipe standards, and that, consequently, the hardware of the vehicles supplied to the violating state may not change dramatically in the short-term. However, manufacturers would be able to revise vehicle compliance levels rapidly to provide that, for warranty and recall purposes, the vehicles are only complying with Tier 1 tailpipe standards. This means that over the life of those vehicles they would only be required to produce emissions below the 50,000 mile and 100,000 mile Tier 1 standards and enforcement action could not be taken to require those vehicles to meet any more stringent standards.[20] As long as manufacturers are not required to sell vehicles meeting standards more stringent than Tier 1 in the violating state, it would not be appropriate for EPA to approve SIP credits for any emissions reductions beyond the levels provided by Tier 1 tailpipe standards. Those vehicles would not be included in calculating the manufacturers'

[18] In an OTC State that had a Section 177 Program in its regulations at the time of opt-in and that had never accepted National LEV as a compliance alternative to the Section 177 Program requirements, the consequences in the violating state discussed in this section would not apply, given EPA's interpretation of section 177. See section VI.D. However, the provisions for a manufacturer's offramp would be the same for a state that failed to modify existing regulations to accept National LEV as a compliance alternative as for any other state action not allowing National LEV as a compliance alternative.

[19] The ''next model year'' would be the model year named for the calendar year following the calendar year in which the OTC State took final state action violating its commitment. For example, if an OTC State violated its commitment by taking final state action in calendar year 1999, the next model year would be MY2000.

[20] See section VIII.C for discussion of how EPA's vehicle certification process would allow a manufacturer to provide vehicles meeting Tier 1 standards in a violating state.

compliance with the National LEV fleet average NMOG standards and the SIP would not provide in any way for vehicles sold in that state to meet emission standards more stringent than Tier 1 levels. EPA is proposing to include in the supplemental final regulations provisions for this approach to SIP credits for vehicles sold in a violating state.

In addition to the relaxed emissions standards that would apply to vehicles sold in the violating state, the other incentive for OTC States not to violate their commitments is that manufacturers would also be able to opt out of National LEV if an OTC State violated its commitment to the program by not allowing National LEV as a compliance alternative. EPA is proposing that there would be no time limit for manufacturers to exercise their right to opt out as long as the state was in violation of its commitment. After a manufacturer opted out, there also would be no opportunity for the state to cure the violation by changing the state law or regulations to accept National LEV as a compliance alternative and thereby negate an opt-out that a manufacturer had already submitted, regardless of whether that opt-out had become effective already. However, once a violating state took final action to cure the violation, manufacturers that had not already opted out could not opt out based on the violation that the state had cured.

The Final Framework Rule gives EPA an opportunity to make a finding as to the validity of an opt-out based on a change to a Stable Standard. See 62 FR 31202–07. This both provides a safe harbor for a manufacturer that relies on an EPA determination of validity, and provides for rapid resolution in the United States Court of Appeals for the District of Columbia if the validity is disputed, thereby avoiding protracted litigation in federal district court. In contrast, EPA does not believe such a process is necessary here. The validity of an opt-out based on a state disallowing National LEV as a compliance alternative should be a straight-forward factual determination. Consequently, EPA believes there is very little benefit to be gained by providing for an EPA determination of the validity of such an opt-out, and EPA is not proposing such a provision.

EPA is proposing that a manufacturer that opts out of National LEV based on a state violation of its commitment to National LEV must continue to comply with National LEV until the opt-out becomes effective (although Tier 1 tailpipe standards will apply in the violating state, as proposed above). EPA is proposing that each manufacturer's opt-out notification would specify the effective date of the opt-out, which in no event could be any earlier than the next model year (i.e., the model year named for the calendar year following the calendar year in which the manufacturer opted out).[21] After the effective date of its opt-out, a manufacturer would have to comply with any non-violating state's Section 177 Program (except for ZEV mandates) provided that at least two-years lead time (as provided in section 177) had passed since the adoption of the state's Section 177 Program. Other than those ZEV mandates that would be unaffected by the National LEV program (i.e., existing ZEV mandates), if a manufacturer opts out, it would not be subject to any other ZEV mandates until two years of lead time had passed, which would run from the date the manufacturer opts out of National LEV and be measured according to the section 177 implementing regulations. After the effective date of a manufacturer's opt-out, in a non-violating state without a Section 177 Program, the manufacturer must meet all applicable federal standards that would apply in the absence of National LEV.

The following summarizes EPA's proposal for the tailpipe standards that would apply if an OTC State violated its commitment by not allowing National LEV as a compliance alternative. For vehicles sold in the violating state, all manufacturers would be allowed to sell vehicles meeting Tier 1 standards and to exclude those vehicles from the NMOG fleet average beginning in the next model year after the date of the state violation for at least the two-year lead time set forth in section 177 and the implementing regulations; then manufacturers would become subject to the state Section 177 Program only if the manufacturer opted out of National LEV and its opt-out had become effective, if the manufacturer decided to comply with the violating state's new Section 177 Program while remaining in National LEV, or if EPA approved the state's requirements into the SIP. If a manufacturer opted out, before the opt-out became effective, the manufacturer would continue to be subject to all National LEV requirements for vehicles sold outside of the violating state. Once a manufacturer's opt-out had become effective, for vehicles sold outside of the violating state, the manufacturer would have to comply with any backstop state Section 177 Programs (except ZEV mandates) that a state had adopted at least two years before the effective date of opt-out and, in other states, would have to comply with all applicable federal standards that would apply in the absence of National LEV. Manufacturers would not have to comply with any ZEV mandates (except those that were unaffected by National LEV) until after two years of lead time had passed as set forth in section 177, which would start to run from the date EPA received the manufacturer's opt-out. Manufacturers that did not opt out would continue to be subject to all National LEV requirements for vehicles sold outside of the violating state and, in the violating state, would be allowed, under the National LEV regulations, to sell vehicles meeting Tier 1 tailpipe standards and to exclude those vehicles from the NMOG fleet average. To the extent these proposed regulations would provide a manufacturer with less than the two-years lead time set forth in section 177, the manufacturer would waive that protection by opting into National LEV and then setting an effective date in its opt-out notification that was earlier than the two-years leadtime would provide.

2. OTC State Fails to Submit SIP Revision Committing to National LEV

The second way in which an OTC State could violate its commitment to National LEV would be to fail to submit a SIP revision to EPA containing the state's regulatory commitment to the program. The consequences of this violation differ slightly from a situation where a state does submit such a SIP revision, receives EPA approval for it, but then violates the commitment by attempting to remove National LEV as a compliance alternative. Failure to submit a SIP revision would not necessarily indicate that the state was attempting to impose a compliance obligation on the manufacturers contrary to the terms of the fundamental agreement underlying the voluntary National LEV program. Consequently, if manufacturers did not choose to opt out of National LEV, they would continue to be subject to all the National LEV requirements for vehicles sold both within and outside of the violating state, and the National LEV program would continue. However, the portion of the OTC State commitments contained in the SIP revisions is critical to the long-term enforceability of the state commitments, so EPA believes it is

[21] If, however, an OTC State took a legitimate offramp as discussed below, a manufacturer could not use a delayed effective date of opt out to continue to comply with National LEV in a state that had opted out after that state's opt-out became effective. As discussed below in section VI.B, an OTC State legitimately opting out of National LEV is required to provide manufacturers at least two years lead time.

important to allow the manufacturers to opt out of National LEV if a state fails to submit a SIP revision. This will maximize the incentives for OTC States to submit their National LEV SIP revisions and to provide manufacturers recourse in the event of a state failure to do so.

As under the previous scenario, EPA is proposing that there would be no time limit for manufacturers to exercise their right to opt out of National LEV if an OTC State had missed the deadline for its National LEV SIP revision and had not yet submitted such a SIP revision. Once the state submitted its SIP revision, even if after the deadline, manufacturers would no longer have the opportunity to decide to opt out of National LEV. Unlike the previous scenario, EPA is proposing that a state that had missed the deadline for its SIP submission would have a limited opportunity to cure the violation. For the first six months from the deadline for the SIP submission, manufacturers would only be able to opt out conditioned on the state not submitting a SIP revision within six months of the initial deadline. If the state submitted the revision within that six-month grace period, any opt-outs based on that violation would be invalidated and would not come into effect. EPA believes this limited opportunity to cure is appropriate here, given the very tight timeframes provided for the OTC States to submit their SIP revisions and the fact that failure to submit this SIP revision would not pose the risk of any immediate change in the manufacturers' compliance obligations. After the six-month grace period, the state's submission of a SIP revision would not negate an opt-out that a manufacturer had already submitted to EPA, even if the manufacturer's opt-out had not yet become effective. However, no manufacturer would be able to opt out after the state submitted the SIP revision no matter how late. As under the previous scenario, whether or not a state has failed to submit a SIP revision by a given date and thereby provided a basis for an opt-out is a very clear cut issue. Consequently, EPA is not proposing to provide for an EPA determination of the validity of an opt-out based on this violation.

Again consistent with the previous scenario, EPA is proposing that, if a manufacturer opts out it may set the effective date of its opt-out as early as the next model year after the date of the opt-out or any model year thereafter.[22] If a manufacturer opts out of National LEV, in the violating state, the National LEV regulations would allow the manufacturer to meet Tier 1 tailpipe standards and would not require those vehicles to be included in the NMOG fleet average calculations. These special provisions for vehicles sold in the violating state would start with the next model year after the manufacturer opts out (e.g., MY2000 for a manufacturer that opts out in calendar year 1999) and continue until the effective date set in the opt-out notice. As under the scenario above, the violating state would not receive SIP credits for emissions reductions from vehicles meeting anything more stringent than the Tier 1 tailpipe standards while those standards apply. Once the manufacturer's opt-out had become effective, the manufacturer would be subject to a Section 177 Program in the violating state if the two-year lead time requirement of section 177 had been met. EPA is taking comment on whether, regardless of the effective date of an opt-out, National LEV regulations should allow manufacturers to sell vehicles that meet Tier 1 tailpipe standards for four years in the violating state.

If a manufacturer opted out of National LEV, in non-violating states it would continue to meet all National LEV requirements until the effective date of its opt out. For vehicles sold in the non-violating states, once the opt-out became effective.

3. OTC State Submits Inadequate SIP Revision Committing to National LEV

A third way in which an OTC State could violate its commitment to National LEV would be to submit a SIP revision that did not adequately commit the state to the National LEV program. Evaluation and approval of SIP revisions is an EPA responsibility, as delegated by Congress under section 110(k) of the Act. Thus, EPA believes that it is appropriate for the Agency to evaluate the adequacy of the submission before a manufacturer could opt out on the basis of a claimed inadequacy. EPA is proposing that manufacturers would be able to opt out if EPA disapproved a National LEV SIP revision, and either the state failed to submit a corrected SIP revision within one year of EPA's disapproval, or the state submitted a modified SIP revision and EPA subsequently disapproved the revision. Under this scenario, the date of the violation that would allow a manufacturer to opt out of National LEV would be either the state's failure to submit a National LEV SIP revision committing to National LEV within one year of EPA's disapproval of its initial SIP revision, or publication of EPA's second disapproval. EPA also considered and is taking comment on the following alternative approaches for when a manufacturer could opt out based on an inadequate National LEV SIP revision. One alternative would be to allow manufacturers to opt out immediately upon EPA's initial disapproval of a state's National LEV SIP revision. Another would be to allow manufacturers to opt out if a state's National LEV SIP revision was inadequate and EPA failed to approve it within nine months (or one year) of the deadline for state submission of the SIP revision, whether that failure was through disapproval or inaction. Still another alternative would be upon a determination by the manufacturer that the SIP revision is inadequate, even if EPA has not yet acted on it.

As with the other types of state violations, EPA is proposing no deadline for manufacturers to opt out based on this offramp. Also, there would be no opportunity for the state to cure the violation after a manufacturer had opted out, although manufacturers that had not opted out could no longer do so once the state had cured a violation and EPA had approved the SIP revision committing the state to National LEV. As proposed, the action allowing opt out is very clear, and hence EPA is not proposing to provide for an EPA determination of the validity of an opt-out based on this type of violation.

Again consistent with the previous scenarios, EPA is proposing that if a manufacturer opts out it may set the effective date of its opt-out as early as the next model year or any model year thereafter.[23] EPA is proposing that manufacturers' obligations under National LEV and state Section 177 Programs would be identical to those described if a state failed to submit a SIP revision.

*B. OTC State or Manufacturer Legitimately Opts Out of National LEV*

Following the general principle that parties should be able to exit National

[22] If, however, an OTC State took a legitimate offramp as discussed below, a manufacturer could not use a delayed effective date of opt out to continue to comply with National LEV in a state that had opted out after the state opt-out became effective. As discussed below in section VI.B an OTC State legitimately opting out of National LEV is required to provide manufacturers at least two years lead time.

[23] If, however, an OTC State took a legitimate offramp as discussed below, a manufacturer could not use a delayed effective date of opt out to continue to comply with National LEV in a state that had opted out after the state opt-out became effective. As discussed below in section VI.B an OTC State legitimately opting out of National LEV is required to provide manufacturers at least two years lead time.

LEV if there is a significant change in the assumptions that underlay their decision to opt in initially, a manufacturer also could opt out if an OTC State or another manufacturer were to opt out of National LEV legitimately.[24] This offramp could be used within 30 days of EPA's receipt of an OTC State or a manufacturer opt-out. The manufacturer could set an effective date for its opt-out beginning the next model year after the date of the manufacturer's opt-out, or any model year thereafter. EPA would not determine the validity of opt-out under this offramp unless EPA is to determine the validity of the initial opt-out. EPA is proposing that manufacturers' obligations under National LEV and state Section 177 Programs would be identical to those described if a state failed to submit a SIP revision, except that no state would be a violating state.

*C. Offramp for Manufacturers for EPA Failure to Consider In-Use Fuel Issues*

EPA is proposing an additional offramp for manufacturers related to the potential effects of fuel sulfur levels on emissions performance of National LEV vehicles. EPA is proposing that manufacturers could opt out of National LEV if EPA failed to consider certain vehicle modifications, on-board diagnostic control systems, or preconditioning of vehicles when requested to do so by a manufacturer as a result of an alleged effect of high-sulfur fuel levels. Manufacturers are concerned that the sulfur levels of in-use fuels supplied outside of California may affect the on-board diagnostic (OBD) systems and tailpipe emissions of National LEV vehicles. However, EPA does not believe that at this point it has sufficient data on these potential effects to identify any problems conclusively and to fully resolve any such problems in the context of the National LEV regulations. EPA recognizes that this remains an important issue for the manufacturers, however, and is proposing to build into National LEV means to allow problems related to fuel sulfur effects on emissions performance of National LEV vehicles to be addressed within the context of National LEV as more information becomes available. These problems would be addressed on a case-by-case basis. EPA would act based on a manufacturer's request, supported by data, that a specific engine family or families are adversely affected by sulfur in a manner covered by one of the conditions incorporated into the National LEV regulations and that appropriate relief is warranted for such family or families.

EPA recognizes that sulfur effects on motor vehicles is also an issue outside of the National LEV context and is being addressed in numerous other actions. These include testing being done to support EPA's Tier 2 Study and the Ozone Transport Assessment Group's recommendation to EPA to explore reducing fuel sulfur levels. EPA is working with the various stakeholders in developing data to quantify any sulfur effects on current and future technology vehicles. EPA has said that in appropriate instances, EPA will address sulfur effects on specific mobile source programs. In March, 1997, EPA released a paper entitled ''OBD & Sulfur White Paper: Sulfur's Effect on the OBD Catalyst Monitor on Low Emission Vehicles.'' This paper summarized the sulfur concerns and the available data, and outlined EPA's approach to resolving OBD/sulfur issues on a case-by-case basis.[25] EPA is pursuing additional investigations into sulfur impacts on OBD and emission control system performance with the cooperation and contribution of other stakeholders. However, as of yet there is little additional data, and while the OBD & Sulfur White Paper will likely be revised in the near future, its suggested case-by-case approach remains EPA's expected approach regarding the OBD/sulfur issue.

Based on their continuing concerns regarding the effects of fuel sulfur levels on OBD systems and vehicle emissions, the auto manufacturers approached EPA in June, 1997 with a proposed resolution for National LEV. Believing that the effects of fuel sulfur were not adequately addressed by EPA in the National LEV program, the manufacturers proposed that National LEV should include an offramp for manufacturers related to in-use fuels issues and that they should be allowed to exit the National LEV program if EPA were to act (or fail to act) in a specified manner to resolve specific sulfur-related issues. The manufacturers outlined six different conditions (set forth below) related to EPA actions (or lack of action) on these issues that they believe should allow the manufacturers to opt out of National LEV. Below, EPA has reproduced each of the conditions for triggering the offramp as stated by the manufacturers, followed by a discussion and EPA's proposal regarding each of the requested offramp conditions.

First, the manufacturers suggested that they be allowed to opt out if ''EPA declines to allow the use of OBD catalyst monitor systems which, if functioning properly on low sulfur gasoline, indicate sulfur-induced passes when exposed to high sulfur gasoline.''

Under current regulations, manufacturers are required to install OBD systems that monitor emission control components for any malfunction or deterioration causing exceedance of certain emission thresholds. These systems also must alert the vehicle operator to the need for repair by illuminating a dashboard malfunction indicator light (MIL) and must store diagnostic information in the vehicle's computer to assist the diagnosis and repair of the problem. Before an OBD system can appear on new vehicles, EPA must certify that the system meets these requirements, and these requirements must continue to be met in actual in-use operation. Proper functioning of OBD systems is evaluated by simulating various malfunctions of the emission control system (e.g., replacing the catalyst or oxygen sensors with ineffective components) and determining whether or not the OBD system ''notices'' the simulated malfunction and responds appropriately.

The offramp condition suggested by the manufacturers reflects their concern that their OBD systems will be designed to pass a certification or recall test properly using the low-sulfur fuel required in California, but that high-sulfur fuel supplied outside of California may affect the OBD system such that it may be unable to detect catalyst degradation at the necessary emission level. In such cases, the MIL could fail to illuminate (a ''sulfur-induced pass''), whereas if the vehicle was operated on low sulfur fuel the MIL would react appropriately. In the unlikely event that EPA concluded that an OBD system should not be certified specifically because of this type of behavior, manufacturers suggest that they be allowed to opt out of the National LEV program.

EPA acknowledges that some data indicate that some OBD systems may behave in the way suggested by this suggested condition for triggering an offramp. Thus, an OBD system might be affected by high-sulfur fuel and fail to register decreased catalyst performance. However, EPA believes that more data is needed to characterize this potential

[24] The validity of any opt-out from National LEV would depend in part on whether the underlying condition allowing opt-out has actually occurred. Where the initial state or manufacturer's opt-out was invalid, it would not provide an offramp for another manufacturer to opt-out of National LEV. Thus, throughout this notice when EPA refers to an initial opt-out as the condition that allows another opt-out, it refers only to valid initial opt-outs.

[25] OBD and Sulfur White Paper, March 1997 (Docket A–95–26, IV–B–06).

concern better. Also, as stated above, considerable efforts involving various stakeholders are underway to evaluate this and other related concerns further. EPA believes that, in the context of the National LEV program, it may be inappropriate to penalize a manufacturer who uses a system that performs as required on low-sulfur fuel but has sulfur-induced passes due to high-sulfur fuel. However, EPA needs to evaluate this potential problem properly on a case-by-case basis. To certify such a system, EPA would have to conclude that the effect was due solely to sulfur and that the OBD system could not otherwise account for the effects of high-sulfur fuel. EPA is also concerned that providing an offramp if the Agency failed to certify an OBD system upon a manufacturer's request puts the Agency in the difficult position of having to approve every request or else risk the collapse of the National LEV program, even if EPA believes that certification is not technically supportable.

EPA is proposing that manufacturers could opt out of National LEV if EPA, upon a written request from a manufacturer in relation to the certification of an OBD catalyst monitor system, fails to consider the use of the system because it indicates sulfur-induced passes when exposed to high-sulfur gasoline, even though it functions properly on low-sulfur gasoline. EPA does not intend to preclude the use of such systems out-of-hand, but believes it cannot at this time accept the offramp language proposed by manufacturers given the current state of knowledge and the need for EPA to evaluate requests carefully on a case-by-case basis. EPA is taking comment on the manufacturers' suggestion. EPA is also taking comment on an alternative that would allow manufacturers to opt out if EPA determined that an OBD system functioned properly on low-sulfur fuel, had sulfur-induced passes due solely to high-sulfur fuel and that the OBD system could not otherwise account for the effects of high-sulfur fuel, and EPA then refused to certify the OBD system because of the sulfur-induced

Second, the manufacturers suggested that they be allowed to opt out of National LEV if ''EPA declines to approve modifications to, on a case-by-case basis, vehicles that exhibit sulfur-induced MIL illuminations due to high sulfur gasoline so as to eliminate the sulfur-induced MIL.''

This suggested offramp condition reflects the manufacturers' concern that exposure to high-sulfur fuel could cause the performance of the catalyst to degrade to the point of OBD detection and the MIL is therefore illuminated, even though the same catalyst would not have degraded enough to cause the MIL to illuminate if the vehicle had been operated on low-sulfur fuel. When such a MIL illumination problem is identified, under current regulations modifications to OBD systems to resolve the problem could be accomplished via field fixes or running changes, which are methods that allow a manufacturer (with EPA approval) to make changes to a previously certified emission control system configuration. With this offramp proposal, manufacturers are essentially requesting that they be allowed to determine when a sulfur-related MIL illumination is occurring in a given engine family and what the appropriate response is, and that if they are not allowed to implement their chosen response (e.g., if EPA does not approve a particular field fix or running change requested by a manufacturer) they are then provided an opportunity to exit the National LEV program.

EPA pledged to address the issue of sulfur-induced MIL illuminations on an in-use, case-by-case basis until future data and information enable a long-term resolution of this issue. This remains the current policy. EPA currently believes that it would be inappropriate to modify OBD systems unless a manufacturer were able to supply in-use data, or at least production-ready vehicle data, demonstrating that sulfur has an adverse effect on catalyst monitoring systems for specific engine families. EPA believes that the offramp language suggested by the manufacturers would be inappropriate because it would effectively force EPA to accept solutions to this problem that may not be technically supportable or else risk the termination of the National LEV program.

EPA is proposing that manufacturers could opt out if, based on a written request from a manufacturer, EPA declines to consider, on a case-by-case basis, the manufacturer's suggested modifications to vehicles that exhibit sulfur-induced MIL illuminations due to high-sulfur gasoline so as to eliminate the sulfur-induced MIL. As explained below, EPA is proposing that the National LEV regulations would define a specific process that would allow manufacturers to notify EPA of this type of problem and would require EPA to respond to a manufacturer's request (e.g., for a running change) within a specified time period. EPA is taking comment on the manufacturers' suggestion. EPA is also taking comment on an alternative that would allow manufacturers to opt out if, on a case-by-case basis, EPA determined that an OBD system exhibited sulfur-induced MIL illuminations due solely to high-sulfur fuel and failed to allow modifications to the vehicles to eliminate the sulfur-induced MIL.

Third, the manufacturers suggested that they be allowed to opt out of National LEV if ''EPA declines to adjust I/M (240/ASM) cut points to account for the effect of the high sulfur content of current commercially available gasoline.''

Similar to the previous issue, manufacturers are concerned that high-sulfur levels could degrade catalysts to the point where vehicles would fail state Inspection/Maintenance (I/M) tests due to the high-sulfur fuel, and they are requesting that EPA adjust I/M standards upwards to account for the impact of sulfur. If EPA does not take such action, manufacturers have proposed that they be allowed to opt out of the National LEV program. EPA does not believe adjustments to I/M cut points to account for the impacts of sulfur are necessary or appropriate at this time. While data being collected by the several cooperative sulfur test programs may help EPA in assessing this issue, there is currently no data to determine whether an adjustment to I/M cutpoints is necessary and if so, the appropriate degree of such an adjustment. Although EPA is taking comment on the manufacturers' suggestion, EPA cannot justify establishing the above condition as a trigger for an offramp because the necessity for such an adjustment is not clear at this time. EPA is interested in obtaining data, including data on Tier 1 vehicles, that might help quantify the effect of sulfur on I/M testing and will work with all the stakeholders to develop the appropriate response if data indicates there is a problem in this instance.

Fourth, the manufacturers suggested that they be allowed to opt out of National LEV if ''EPA declines to allow sufficient pre-conditioning procedures (including low sulfur fuel and additional vehicle preparation cycles) prior to in-use testing to remove the effects of high sulfur from currently available gasoline.''

Current emission test procedures require specific procedures to ''precondition'' each test vehicle before the vehicle enters the actual emission test portion of the procedure. This ensures that all vehicles enter the emission test in a similar condition. Current data suggests that the deleterious effect of sulfur on the catalyst is reversible by operating the vehicle for some period of time on a low-sulfur fuel. This suggested offramp condition is designed to alleviate

manufacturers concern that in-use vehicles tested by EPA (recall testing) might not experience enough preconditioning operation under current regulations to eradicate the effect of sulfur, and that this could cause vehicles to inappropriately fail in-use emission tests. This issue does not apply to preconditioning of vehicles for certification or Selective Enforcement Auditing (SEA) testing, since these vehicles would not have been exposed to high-sulfur fuel. Consequently, manufacturers propose that EPA allow them to expand the preconditioning of the vehicle used for in-use testing in order to guarantee the maximum reversal of the sulfur impact.

Current regulations allow the approval of additional preconditioning in ''unusual circumstances'' if the need is demonstrated (see 40 CFR 86.132–96(d)). EPA stated in the Final Framework Rule that ''[d]etrimental effects on National LEV vehicles from commercially available fuel sold in the 49 States could likely be considered an unusual circumstance'' (62 FR 31230). The specific preconditioning offramp language proposed by the auto manufacturers is inappropriate because it would remove EPA's ability to determine what type and amount of preconditioning is necessary and appropriate, particularly given that all stakeholders are continuing to explore the exact nature of sulfur's impact on various technologies and the degree of reversibility exhibited by different emission control technologies. EPA will work with manufacturers in the context of the currently applicable regulations to determine an appropriate level of allowable preconditioning. Any preconditioning procedure utilized under 40 CFR 86.132–96(d) to address sulfur effects on National LEV vehicles must be directed only at alleviating sulfur effects. EPA also notes that the automakers, oil industry, and EPA are currently testing the potential effects of various sulfur levels on clean vehicles, and in the context of this testing a pre-conditioning cycle to remove sulfur effects on catalysts is being analyzed. EPA will look at the results of this testing and other appropriate test results presented by interested parties and will determine whether any resulting sulfur preconditioning cycle is appropriate to apply to specific National LEV vehicles for in-use testing. Currently it is premature to discuss whether an offramp should be triggered by EPA's refusal to allow a specific sulfur preconditioning procedure since no such procedure has been developed. Sulfur effects seem to vary depending on catalyst type and location, so EPA will not automatically apply one procedure to all manufacturers unless new information arises from the various test programs that causes EPA to determine that to be an appropriate course of action.

EPA believes that given the current understanding of sulfur effects on in-use emission performance (as measured by in-use testing) and the case-by-case approach EPA is planning to use to address sulfur effects on OBD systems, manufacturers should only be able to opt out of National LEV based on preconditioning concerns if EPA fails to consider information before the Agency in a specific case showing a need for additional preconditioning. Thus, EPA is proposing that manufacturers would be able to opt out of National LEV if EPA declines to consider, on a case-by-case basis, prior to in-use testing, pre-conditioning procedures designed solely to remove the effects of high sulfur from currently available gasoline. EPA is taking comment on the manufacturers suggestion. EPA is also taking comment on an alternative that would allow manufacturers to opt out if EPA determined that there are significant effects of high-sulfur fuel on OBD systems, and then EPA declined to allow sufficient pre-conditioning procedures prior to in-use testing to remove the effects of high sulfur from currently available gasoline.

Fifth, the manufacturers suggested that they be allowed to opt out of National LEV if ''EPA declines to ensure that in-use, SEA, and/or certification testing of low emission vehicles is conducted using California Phase 2 reformulated gasoline (RFG).''

The regulations promulgated in the Final Framework Rule allow the use of California Phase II RFG for in-use, SEA, and certification testing. Certification test fuel specifications, which include California Phase II RFG, are part of the National LEV Core Stable Standards, and thus EPA cannot change these specifications over the objection of the manufacturers without providing an offramp for them to opt out of National LEV (See 62 FR 31202). Under National LEV, manufacturers will be able to choose to use specified Federal or California gasoline for exhaust emission testing, except where a specific fuel is required, such as Federal fuel for evaporative emissions testing. EPA's longstanding policy of conducting SEA and recall testing using the fuel on which the manufacturer chose to certify its vehicle will continue to apply under the National LEV program. EPA does not believe that a specific condition for opt-out related to use of California Phase 2 RFG for vehicle testing is necessary given the fuel specifications already in the National LEV regulations and EPA's policy regarding in-use test fuels. However, EPA is taking comment on allowing manufacturers to opt out of National LEV if EPA declines to conduct National LEV compliance testing on the fuel used by a manufacturer during certification of the vehicle or engine.

Sixth, the manufacturers suggested that they be allowed to opt out of National LEV if ''EPA, after concluding that there are significant effects of high sulfur fuel, fails to initiate a multi-party process to take appropriate action to ameliorate the effects of high sulfur gasoline.''

EPA has already committed that it will conduct a multi-party process to resolve in-use fuel sulfur issues if further testing reveals a significant sulfur effect on National LEV vehicles. See 62 FR 31221. However, EPA believes that it is unnecessary to make violation of this commitment a condition that would allow manufacturers to opt out of National LEV.

EPA is proposing the following process for manufacturers to opt out of National LEV if one of the conditions described above occurred. A manufacturer would have to send a request to EPA in writing identifying the particular problem at issue, demonstrating that it was due to in-use fuel sulfur levels, and requesting EPA to consider taking a specified action in response. EPA proposes that the Agency would have 60 days to respond to the manufacturer's request in writing, stating the Agency's decision and explaining the basis for the decision. If EPA fails to respond in this manner in the timeframe allotted, manufacturers would have 180 days after the deadline for the EPA response to decide to opt out of National LEV. Once EPA responded to the manufacturer's request, even if after the 60-day deadline, a manufacturer that had not yet opted out based on this offramp would no longer be able to do so, although if a manufacturer had already submitted an opt-out, that opt-out would be unaffected by EPA's subsequent response. Only the manufacturer that sent the initial request to EPA would be able to opt out if EPA failed to respond, but in section VI, EPA is proposing that if one manufacturer (or OTC State) opted out based on any of the identified offramps, other manufacturers would be able to opt out as well on the basis that there had been a change to the set of parties originally covered by the program.

EPA proposes that, consistent with opt-outs based on other offramps, a manufacturer that opts out based on this offramp must continue to comply with National LEV until the opt-out becomes effective. The manufacturer may set the effective date of its opt-out as early as the next model year or any model year thereafter. After the effective date of its opt-out, the manufacturer would be subject to any backstop Section 177 Programs (except for ZEV mandates) provided that at least two-years lead time (as provided in section 177) had passed since the adoption of the state's Section 177 Program, or would be subject to Tier 1 requirements in states without such backstops. Other than those ZEV mandates that would be unaffected by the National LEV program (i.e., existing ZEV mandates), if a manufacturer opts out, it will not be subject to any other ZEV mandates until two years of lead time has passed, which would run from the date the manufacturer opts out of National LEV and would be measured according to the section 177 implementing regulations.

In lieu of providing the offramps described above, EPA is also taking comment on an alternative approach that would make the provisions for EPA action described above a substantive requirement on EPA under the regulations, rather than making EPA's failure to act a condition that would allow manufacturers to opt out of National LEV. For example, the preconditioning regulations of 40 CFR 86.132–96(d) would be modified to include a requirement that EPA respond to any manufacturer's request made under that section within 60 days. In the event that EPA failed to respond within the specified time period, the manufacturer would be able to enforce the regulatory requirement against EPA, but would not also be able to opt out of National LEV.

*D. Offramp for OTC States*

In light of the proposed practically and legally binding commitments that the OTC States would make to the National LEV program, it is also appropriate to identify the limited circumstances under which the states should no longer be bound by those commitments. EPA is proposing two circumstances in which an OTC State could opt out of National LEV: (1) If a manufacturer were to opt out of National LEV; or (2) if EPA were to change a Stable Standard in a way that would make it less stringent and as a consequence, it would have changed EPA's initial determination that National LEV would produce emissions reductions equivalent to OTC State Section 177 Programs. EPA is proposing that if an OTC State were to take an identified legitimate offramp from National LEV, it would no longer be bound by any commitments that it made to the program in its initial opt-in package, other than its commitment to follow the National LEV regulations to transition from National LEV to a state Section 177 Program. An OTC State that was already in violation of its National LEV commitments would not be able legitimately to opt out of National LEV based on a manufacturer's opt-out.

To opt out of National LEV, EPA is proposing that the state official that signed the commissioner's letter in that state would send EPA an opt-out notification letter. The letter would state that the state was opting out of National LEV and specify the condition allowing the state to opt out. The date of the state opt-out would be the date that EPA received the opt-out letter, but EPA is proposing that there would be a two-year transition period before the state opt-out would become effective and the state could require compliance with a Section 177 Program without allowing National LEV as a compliance alternative. EPA is taking comment on whether the National LEV regulations should require a four-year transition period instead. Whether an opt-out letter alone would itself remove National LEV as a compliance alternative as of the effective date of the opt-out depends on how the state regulations are written. In opting into National LEV the state could structure its regulations and SIP to provide that National LEV would not be an alternative to the state's Section 177 Program if the state had opted out of National LEV pursuant to the National LEV regulations and the opt-out had become effective.

1. OTC State Offramp Based on Manufacturer Opt-Out

EPA is proposing that an OTC State would be able to opt out of National LEV without violating its commitment if a manufacturer opted out of National LEV under one of the identified offramps for manufacturers.[26] All parties would have made the choice to opt into National LEV with an understanding about the manufacturers and states that would be subject to the program. If those fundamental assumptions were to change, the parties to the voluntary program should have the opportunity to reevaluate their commitments and choose to opt out. Some OTC States have indicated, for example, that they believe it would not be feasible in their states to have some manufacturers subject to National LEV while others that had opted out of National LEV were subject to Section 177 Program requirements.

If a manufacturer opted out, EPA is proposing that OTC States would have a three-month period to submit an opt-out letter. The start of the three-month period would depend on the reason the manufacturer opted out. If a manufacturer were to opt out because of state action or inaction, or because of EPA's failure to consider a manufacturer's request related to effects of in-use fuels, the three-month period would start on the date EPA received the manufacturer's opt out notification.[27] For a manufacturer's opt-out based on a change to a Stable Standard, the three-month period would start on the date of EPA's finding that the opt-out was valid or the date of a final judicial ruling that a disputed opt-out was valid. If a state did not opt out within that three-month period, the opportunity to opt out based on that manufacturer action would no longer be available.

The state opt-out could not become effective until the state had provided manufacturers with the two-year lead time set forth in section 177, with the two-year lead time to start on the date that EPA received that state's opt-out letter. Until the state's opt-out became effective, manufacturers that had not opted out of National LEV or whose opt-outs had not yet become effective would continue to be subject to all the National LEV requirements for vehicles sold in that state. Manufacturers whose opt-outs had already become effective would not be affected by the state opt-out. Once the state opt-out became effective, all manufacturers would be subject to the state's Section 177 Program, if it had been adopted at least two years previously.[28] As the existence of a manufacturer opt-out as the basis for the state opt-out is a simple factual determination, EPA is not proposing that the Agency should evaluate the

[26] The condition allowing an OTC State to opt out would only arise if the initial manufacturers' opt-out were valid. See n. 27.

[27] However, if a manufacturer were to opt out because a state failed to submit a SIP revision by the applicable deadline and the manufacturer submitted the opt-out notification within six months of the applicable deadline for the SIP revision, the manufacturer's opt-out would not be final until the end of that six-month period. That date (not the date of the manufacturer's opt-out) would start the three-month period for state opt out.

[28] This is true even for a manufacturer that had opted out and set an effective date for its opt-out that was later than the effective date of the state's opt-out.

validity of a state opt-out before it could become effective.

2. OTC State Offramp Based on Change to Stable Standards

The second condition that would allow an OTC State to opt out of National LEV would be an EPA change to a Stable Standard that made National LEV less stringent and, if the change had been known at the start of National LEV, would have changed EPA's initial determination that National LEV would produce emissions reductions at least equivalent to the adopted OTC State Section 177 Programs. This offramp for OTC States is the counterpart to the manufacturers' offramp if EPA makes certain types of changes to Stable Standards that make the Standards more stringent.

In section IV above, EPA discussed its determination that National LEV would produce equivalent or greater emissions reductions than the alternative of adopted OTC State Section 177 Programs. In the modeling, EPA assumed that, in the absence of National LEV, programs would be in place in those OTC States that currently have Section 177 Programs (including backstop programs) and that the federal Tier 1 standards would apply in the other OTC States. EPA is proposing that, if EPA were to change any of the Stable Standards in a way that made the requirements less stringent, an OTC State could request EPA to reevaluate whether National LEV is still equivalent to the alternative approach of OTC State Section 177 Programs. The National LEV regulations would provide that within six months of receiving the request EPA would conduct such an evaluation or would determine that the revision to the standard or requirement would not make it less stringent.

In reevaluating equivalency, EPA would use the same model and inputs as it used in the initial equivalency determination. EPA would modify the modeling only to reflect the effect of the modified Stable Standard and the effect of having Section 177 Programs (identical in stringency to the Section 177 Programs modeled in the initial equivalency determination) in any additional OTC States that had adopted section 177 backstop programs since the initial equivalency determination. In reevaluating equivalency, EPA believes that the focus of the evaluation should be the ongoing validity of the initial decision to opt into National LEV, not whether the parties would make the same decision at the time of the reevaluation based on then-current conditions. This is consistent with the approach that the parties took to the periodic equivalency evaluation in the initialed MOUs. At the time of their opt-ins, the parties should not have anticipated that EPA would change one of the Stable Standards, and such a change would affect one of the basic assumptions used to calculate the relative benefits of National LEV and the alternative of OTC State Section 177 Programs. Thus, it is appropriate to reevaluate the equivalency of the two approaches given such a change, and provide the OTC States an opportunity to opt out of National LEV if it is no longer equivalent to the alternative.

EPA is proposing to include in the equivalency reevaluation the effect of Section 177 Programs in any additional OTC States that had adopted Section 177 Programs since the initial equivalency determination. This represents a compromise between OTC States' and manufacturers' positions. In making the initial equivalency determination, EPA is proposing to compare National LEV to the alternative of OTC State Section 177 Programs. See section IV. As discussed above, EPA is proposing to assume that Section 177 Program requirements would apply in those OTC States that currently have the requirements or backstop requirements in their state law or regulations and that the federal Tier 1 standards would apply in the other OTC States. The OTC States requested that EPA take a somewhat different approach to the initial equivalency determination by assuming that Section 177 Programs would also apply in particular OTC States that are currently in the process of developing such regulations. For the initial determination, such a change in the assumptions would have no effect on EPA's finding that National LEV would produce emissions reductions at least equivalent to those that would be produced by the alternative. EPA performed a sensitivity analysis for the initial equivalency determination to analyze the effects of the most optimistic assumptions regarding adoption of Section 177 Programs by OTC States, which indicated that even with those assumptions National LEV would still produce emissions reductions equivalent to or greater than that alternative. However, given the OTC States' concern, EPA believes it would be appropriate to modify the inputs to any reevaluation to reflect the then-current reality in terms of which OTC States had actually adopted Section 177 Programs. The modeling would continue to assume that all states with Section 177 Programs would have the same requirements used in the initial equivalency modeling, as discussed above. Thus, the reevaluation would not reflect any changes in the state's legal authority under the CAA to adopt programs subsequent to their decision to opt into National LEV, but it would take into account subsequent actions taken by the OTC States based on legal authority they had at the time of the decision.

EPA does not believe it would be appropriate to include in the reevaluation of equivalency the effects of other changes in circumstances affecting emissions reductions under National LEV or the alternative, such as changes to California's LEV program. At the time of opt-in, all of the parties will be aware that circumstances might change over the period that National LEV is in effect. For example, California might modify its requirements during that time. In making the decision to opt into National LEV and choose it over the alternative for a given period of time, the parties will have to evaluate the likelihood that any of the relevant circumstances would change sufficiently to reverse their inclination to opt in. Thus, the OTC States will have to consider the likelihood that California would modify its CAL LEV requirements and the likely effect of such a modification, and decide whether to commit to National LEV in lieu of a state Section 177 Program that could include any subsequent changes to CAL LEV. By opting in, the OTC States will have made the decision that the possibility of those benefits is outweighed by the certainty of the benefits from National LEV (if it goes into effect). The reevaluation of equivalency should not allow parties to reconsider that initial choice with the benefit of hindsight. National LEV will only come into effect if the parties to the program commit to it for a specified duration, and an EPA change to the underlying standards should not become an opportunity to undermine that basic commitment.

If EPA made a change to a Stable Standard that would have changed the equivalency determination, EPA is proposing that the OTC States would have three months to opt out, running from the date that EPA found that National LEV would no longer produce emissions reductions equivalent to those that would be produced by OTC State Section 177 Programs. If a state did not opt out within that three month period, the opportunity to opt out based on that finding would no longer be available.

Also consistent with the other state offramp, a state opt-out based on a change to a Stable Standard could not become effective until it had provided

manufacturers with the two-year lead time set forth in section 177, with the two-year lead time to start on the date that EPA received the state's opt-out letter. The manufacturers' obligations if a state took this offramp would be determined the same way as described in the preceding section (when an OTC State opts out because a manufacturer opted out).

*E. Lead Time Under Section 177*

The proposed opt-out regulations discussed above incorporate and rely on EPA's proposed interpretation of section 177's requirements related to state adoption of the CAL LEV program. Section 177 of the Act provides the legal authority for states to adopt ''standards relating to the control of emissions from new motor vehicles'' and governs the timing of implementation of such requirements. It provides that a state may adopt new motor vehicle standards only if they are identical to California standards for a given model year for which EPA has granted a waiver, and the state must ''adopt such standards at least two years before commencement of such model year (as determined by regulation of the Administrator).'' EPA has previously adopted regulations interpreting this provision. See 40 CFR 85.2301 *et seq.* These regulations do not adequately address the issue of when the two-year lead time starts for backstop Section 177 Programs (i.e., a Section 177 Program that allows National LEV as a compliance alternative) after National LEV has come into effect.

It is not clear under section 177 or EPA's current implementing regulations when the two-year lead time period would start if, after National LEV came into effect, a state with a backstop Section 177 Program were to delete National LEV as a compliance alternative (either in violation of its commitment to National LEV or legitimately by taking an offramp) or if a manufacturer legitimately decided to opt out of National LEV. Therefore, as part of the National LEV regulations, EPA is proposing regulations to determine the date on which the two-year lead time period starts in the special circumstances that arise only when a state has a backstop Section 177 Program that allows National LEV as a compliance alternative and National LEV has gone into effect.

The meaning of the two-year lead time provision in section 177 is ambiguous in the context of National LEV and backstop Section 177 Programs. There are at least three possible ways to approach this provision in this context. One possible approach is that the two-year lead time period starts when the state adopts the backstop Section 177 Program. Under this interpretation, section 177 would require the state to have adopted its backstop Section 177 Program at least two years before the model year to which it applies. After the two-year lead time had run from the date of adoption, the state could remove National LEV as a compliance alternative and require immediate compliance with the Section 177 Program at any time. EPA does not believe this is a proper application of section 177 in the National LEV context. The two-year lead time requirement is intended to give manufacturers time to make the changes in product planning, production and distribution that are involved in switching from one motor vehicle program to another. It recognizes the practical difficulties in making large production shifts in very short time-frames. Where manufacturers have had the legal authority to comply with National LEV in lieu of the state program, allowing states to drop National LEV as a compliance alternative with no lead time would allow states to circumvent the protection that Congress conferred on manufacturers in section 177.[29] Thus, EPA is not proposing to adopt this approach.

Another possible approach to section 177 in these limited circumstances, and the one that EPA is proposing to adopt, is that, if a manufacturer will need to comply with a state Section 177 Program after National LEV has come into effect, the two-year lead time runs from the date that the manufacturer knew that it would need to comply with the state Section 177 Program rather than with National LEV. EPA believes this is the most appropriate way to implement section 177 in this special circumstance, as long as manufacturers are able to waive the two-year lead time requirement. Given that the failure to provide statutory lead time renders noncomplying state programs unenforceable, rather than rendering them void,[30] there should be little question that manufacturers have the ability to waive the lead time requirement if they choose. This approach to section 177 (including both when lead time starts and that manufacturers can waive the lead time) ensures that, in the context of National LEV and state backstop Section 177 Programs, two of Congress' purposes in adopting section 177 are met—it protects manufacturers from having insufficient time to switch from one motor vehicle program to another, and it allows states to ensure that they can achieve the extra emissions reductions from motor vehicles contemplated by section 177.

EPA's proposed interpretation of section 177 is reflected in today's proposed regulations regarding what requirements would apply in the unlikely event that an OTC State were to break its commitment to National LEV or that a manufacturer or an OTC State were to opt out of National LEV. For example, if a state with a backstop Section 177 Program were to delete National LEV as a compliance alternative after National LEV had come into effect, the state would have changed the manufacturers' regulatory obligations and the manufacturers would be entitled to two-years lead time running from the date of the state action purporting to change the manufacturers' regulatory obligation. By opting into National LEV, manufacturers would not be agreeing to waive the lead time required under section 177 in a circumstance where a state broke its commitment to National LEV and deleted National LEV as a compliance alternative, and thus the manufacturer would get the full two-years lead time set by section 177.

Another example demonstrates how the waiver provision modifies the two-year lead time. If an offramp were triggered and a manufacturer were to decide to opt out of National LEV and then set an effective date one year from the time of its opt out, under today's proposed regulations, upon the effective date of the opt out, the manufacturer would be required to comply with Section 177 Programs (except for backstop ZEV mandates) in any state that had not broken its commitment to National LEV. To the extent that this provides the manufacturer with less than two-years lead time, the manufacturer will have waived the lead time provision by opting into National

[29] EPA is proposing to reject the date of state adoption of regulations as the starting date for determining whether the section 177 lead time requirement has been met only in those situations where a state has adopted a backstop Section 177 Program and National LEV has come into effect. For those states that already have backstop Section 177 Programs, if National LEV does not come into effect, the date of adoption of the state regulations is still the controlling date for determining when the two-year lead time requirement has been met. In those states, the only legal option available to manufacturers has been to comply with the state Section 177 Program. The theoretical possibility that they might not have to comply with the state requirements does not mean that they have not been given the two-year lead time required by section 177.

[30] See *American Automobile Manufacturers Ass'n* v. *Greenbaum*, No. 93–10799–MA, slip op. at 23, 1993 WL 442946 (D. Mass. Oct. 27, 1993), *aff'd., 31 F.3d 18 (1st Cir., 1994).*

LEV combined with setting the effective date for its opt-out. For backstop ZEV mandates, however, manufacturers would not have to comply with the ZEV mandate until the two-year lead time period had passed (which would start running from the date of the manufacturer's opt-out) because in opting into National LEV manufacturers are not waiving the two-year lead time with respect to ZEV mandates.

A third possible approach to section 177's two-year lead time requirement provides an alternative basis for today's proposal. Under this approach, the lead time requirement differs depending upon the factual setting. In some instances, measuring lead time from the date of state adoption of a backstop Section 177 Program still provides manufacturers adequate protection and thereby implements both the clear language of the statute and the clear intent of the provision. For example, in opting into National LEV, a manufacturer is choosing to accept a compliance alternative that involves some risk of a rapid change in the manufacturer's regulatory obligations if the manufacturer opts out. However, as proposed here, the program that the manufacturer is opting into provides substantial protection for manufacturers with regard to the applicability of backstop Section 177 Programs upon an opt-out. Because the manufacturer controls the effective date of the opt-out and the manufacturer would not be subject to a backstop Section 177 Program until its opt-out became effective, the manufacturer can ensure that it does not become subject to a Section 177 Program without whatever lead time it views as adequate. In this situation, the statutory intent to ensure that manufacturers have lead time is met by providing that a state can immediately implement a Section 177 Program for any manufacturer whose opt-out from National LEV is effective, if the backstop Section 177 Program was adopted at least two years previously. Thus, for situations where the manufacturer controls the date that it becomes subject to the Section 177 Program, section 177 would start the two year lead time period from the date of state adoption of the backstop Section 177 Program.

The other type of situation is one where the state takes an action imposing requirements on a manufacturer under section 177 and the manufacturer has no control over the timing of those requirements. For example, a state might remove National LEV as a compliance alternative from its state regulations, leaving only the Section 177 Program requirements in place, which the state had adopted at least two years earlier. In that instance, making the manufacturer immediately subject to the section 177 requirements would be contrary both to the purposes of the section 177 lead time requirement and to the intended operation of National LEV. By opting into National LEV the manufacturer did not accept the possibility that a state might commit to National LEV and then violate that commitment. Nor is there any way for the manufacturer to protect itself against an immediate application of the section 177 requirements by the violating state, except not to opt into National LEV at all. Under the circumstances where the state controls the timing of the applicability of the Section 177 Program, the section 177 lead time provisions would be implemented by requiring two years of lead time from the date that the manufacturer knew it would become subject to the state's Section 177 Program without the option of complying with National LEV as an alternative.

The interpretation of section 177 that EPA is proposing would apply only in the very unique situation presented by National LEV—where states and manufacturers are both voluntarily opting into the national program. It does not necessarily provide any guidance for other circumstances.

## VII. National LEV Will Produce Creditable Emissions Reductions

In the Final Framework Rule, EPA noted that National LEV must be an enforceable program to grant states credits for SIP purposes for emission reductions from National LEV vehicles. As discussed in the Final Framework Rule, there are two aspects to ensuring that National LEV is enforceable. See 62 FR 31225 (June 6, 1997). First, the National LEV program emissions standards and requirements must be enforceable against those manufacturers that have opted into the program and are operating under its provisions. In the Final Framework Rule, EPA found that the National LEV program meets this aspect of enforceability. Second, the National LEV program itself must be sufficiently stable to make it likely to achieve the expected emissions reductions. To achieve the expected emissions reductions from National LEV, the offramps must not be triggered and the program must remain in effect for its expected lifetime. EPA also found in the Final Framework Rule that the program elements finalized in that rule would contribute to a stable National LEV program. In today's notice, EPA proposes that the complete National LEV program as contained in today's proposal and the Final Framework Rule would be sufficiently stable to make the program enforceable and hence creditable for SIP purposes.

The only circumstances that would allow the National LEV program to terminate prematurely would be an OTC State's failure to meet the commitments it makes regarding adoption of motor vehicle programs under section 177 of the Act, certain EPA changes to Stable Standards that would allow either a manufacturer or an OTC State to opt out of National LEV, or certain EPA actions or inactions related to in-use fuels.[31] The Final Framework Rule described the basis for EPA's belief that the Agency is unlikely to change any of the Stable Standards in a manner that would give the auto manufacturers the right to opt out of National LEV. Here EPA proposes to find that National LEV is stable because EPA believes that an OTC State is unlikely to fail to meet its commitments to National LEV, EPA is unlikely to change any of the Stable Standards in a manner that would allow the OTC States to opt out of National LEV, and EPA is unlikely to act in a manner that would allow manufacturers to opt out based on the proposed offramps related to in-use fuels.

### *A. OTC States Will Keep Their Commitments to National LEV*

As discussed above, under this proposal there are three ways in which an OTC State could violate its commitments to National LEV and allow the manufacturers to opt out of the program: (1) Attempt to have a state Section 177 Program (including ZEV mandates, except in states with existing ZEV mandates) that was in effect and that prior to MY2006 did not allow National LEV as a compliance alternative; (2) failure to submit a National LEV SIP revision to EPA by the specified date; or (3) failure to submit an adequate National LEV SIP revision. EPA is confident that the OTC States will keep all of their commitments to National LEV for the duration of the program. The OTC States' practical ability to meet their commitments, the fact that the OTC States would have made commitments to the program through both practically binding instruments and legally binding instruments, and the effects of a

[31] EPA is also proposing that OTC States could opt out if a manufacturer opted out, and manufacturers could opt out if either another manufacturer or an OTC State opted out. Yet for purposes of evaluating the stability of the National LEV program, EPA need not consider these secondary opt-out opportunities because they would only arise if an OTC State or EPA had already triggered another offramp.

violation of their commitments, all combine to support a finding that the states are unlikely to trigger an offramp for manufacturers.

First, the OTC States should have no practical difficulty carrying out their commitments. As proposed, after the OTC States have opted into National LEV and the program has come into effect, the states would need to adopt regulations (or modify existing regulations) to commit to accept National LEV as a compliance alternative for the specified duration and to submit those regulations to EPA as a SIP revision within one year (or for a few states, eighteen months) of the date of EPA's finding that National LEV is in effect. Based on discussions with each of the OTC States on the time needed to complete a rulemaking in that state, EPA believes that these are realistic deadlines for state action, which would provide sufficient time for the states to complete their regulatory processes and submit their SIP revisions. (See docket no. A–95–26 for memo on these discussions.) In addition, the SIP submissions follow fairly quickly upon the initial OTC State opt-ins, which maintains the political momentum for the states to follow through on the second step of their commitments. The deadline for SIP submissions would require states to begin developing their regulatory commitments almost immediately after their Governors issue executive orders (or letters) committing to National LEV and directing the state agencies to submit the SIP revisions. EPA believes it is highly unlikely that states would go through all the effort to sign up to the National LEV program and then almost immediately derail the program by failing to submit a SIP revision. There appears to be no way in which such an action could benefit a state, and there could be a substantial negative public reaction associated with such a reversal. Apart from the need to adopt regulations and submit a SIP revision, there is no other action states need to take to uphold their commitments to National LEV and hence no practical impediment to states carrying out their commitments to National LEV.

In addition, the OTC States would be practically and legally bound to uphold their commitments to allow National LEV as a compliance alternative to a state Section 177 Program for the duration of their commitments. The initial opt-ins from the Governors and state commissioners would provide a substantial expression of support for National LEV at high state political levels. Through the opt-in instruments, the state would have publicly committed to accept National LEV as a compliance alternative to a state Section 177 Program for the duration of the commitment. The executive order (or letter) would both invest the commitments with the full authority of the state Governors and initiate the second step of the opt-in. An explicit directive from the Governor to submit such a SIP revision should assure that the state agency will initiate the ordered action. The only foreseeable cause of failure to do so would be if a Governor subsequently countermanded the directive. EPA believes this eventuality is highly unlikely, given both the short time frame in which such a reversal would have to occur and all of the other incentives for the states to meet their commitments, such as the environmental costs of allowing the manufacturers to opt out once the program has begun. While the outcome of a government rulemaking process cannot be predetermined, these same incentives for the states to meet their commitments make it highly probable that, once proposed, the states will finalize the regulatory changes and SIP revisions necessary to complete their commitments to National LEV.

Once EPA has approved a National LEV SIP revision, the state would be legally bound to uphold its commitment. As discussed above in section V.C.4, an approved SIP provision committing a state to accept National LEV as a compliance alternative to a state Section 177 Program or ZEV mandate would preclude a conflicting state law that required manufacturers to comply with a state Section 177 Program or ZEV mandate without allowing National LEV as a compliance alternative. Until EPA approved a subsequent SIP revision, manufacturers could enforce the initial SIP commitment in court. Furthermore, EPA would be obligated to disapprove a subsequent SIP revision that violated a state's commitment to allow National LEV as a compliance alternative for the specified period because it would likely interfere with other states' ability to attain the NAAQS. Other states would have reasonably relied upon the emissions reductions from National LEV for attainment and maintenance, and the effect of approving the new SIP revision would almost certainly be to deprive the states of those reductions.

Even if the state were not bound to its commitment legally, the practical effects of not meeting its commitment provide an independent basis for finding that National LEV is stable. The structure of the proposed opt-out provisions would establish substantial disincentives for OTC States to violate their commitments, given the requirements that would apply to vehicles sold in the violating state, the opportunity it would provide for manufacturers to opt out of National LEV, and the consequences of such an opt-out. As discussed in detail above in section VI.A.1, EPA is proposing that, for an OTC State that has violated its commitment by attempting to have a state Section 177 Program that does not allow National LEV as a compliance alternative, the consequences in that violating state would be that under National LEV all manufacturers would be able to comply with Tier 1 tailpipe standards and not count those vehicles in the fleet NMOG average. Thus, the violating state would receive SIP credits based on this reduced compliance obligation. Similarly, if a state fails to submit its SIP revision committing to National LEV or submits an inadequate SIP revision, the same reduced tailpipe standard requirements would apply in the violating state for any manufacturer that opted out of National LEV until the manufacturer's opt out became effective. Thus, the violating state would (or is likely to, depending upon the type of violation) receive higher emitting vehicles and commensurately fewer SIP credits for a potentially long period of time. (See section VI.A above for a discussion of timing of requirements applicable to manufacturers under various options.)

In addition, states would be further discouraged from violating their commitments because a state violation would give manufacturers the opportunity and reason to opt out of National LEV, and manufacturer opt-outs would hurt air quality in all states. If National LEV is in effect, a substantial number of the OTC States and probably all of the 37 States are unlikely to have backstop Section 177 Programs in place. States without backstop Section 177 Programs would not be able to implement a state Section 177 Program for over two years because of the time needed to adopt a program and the two years of lead time required under section 177. During this period, manufacturers that had opted out of National LEV would have to comply only with federal Tier 1 standards for sales of new motor vehicles in those states without backstop programs. Also, sales of these Tier 1 vehicles would further increase vehicle emissions in both the violating state and states with backstop Section 177 Programs as well, through migration of dirtier Tier 1 vehicles.

EPA is confident that the combination of the feasibility of compliance with the OTC State commitments, the practical

and legal constraints on a state breaking its commitment, and the environmental and SIP-related consequences of a state breaking its commitment make it highly unlikely that an OTC State that has opted into National LEV will violate any of its commitments to the program.

*B. EPA Is Unlikely To Change a Stable Standard To Allow OTC States To Opt Out of National LEV*

In the Final Framework Rule, EPA explained why the Agency is unlikely to change any of the Stable Standards in a manner that would give the auto manufacturers the right to opt out of National LEV. EPA also believes it is unlikely to change any of the Stable Standards in a manner that would allow the OTC States to opt out of National LEV. As proposed above in section VI.B.2, an OTC State would be able to opt out of National LEV if EPA changed a Stable Standard in a way that made it less stringent and as a consequence would have changed EPA's initial determination that National LEV would produce emissions reductions equivalent to the OTC State Section 177 Programs that would be in place in the absence of National LEV. Given the greater emissions reductions that would be produced by National LEV compared to the alternative of OTC State Section 177 Programs (discussed above in section IV), only a significant weakening of a Stable Standard would be likely to have changed EPA's determination that National LEV would produce emissions reductions at least equivalent to the alternative. Such a weakening of a Stable Standard would be contrary to EPA's mission of environmental protection and would jeopardize the National LEV program, which the Agency strongly supports and in which EPA has invested significant resources.

EPA's mission is to protect human health and the environment, in this case by reducing air pollution from motor vehicles. Absent a serious problem of technical feasibility, EPA has no reason to make the Stable Standards significantly less stringent over time. EPA has evaluated each of the National LEV requirements contained in the Final Framework Rule and today's proposal, and the Agency believes that they are technically feasible. Almost all of the technical requirements for vehicles certified under National LEV are consistent with the provisions of the draft MOU initialed by the motor vehicle manufacturers' associations as an acceptable approach to the program, which strongly indicates that the manufacturers believe the National LEV requirements are feasible. While a few requirements, such as the Supplemental Federal Test Procedure (SFTP), were not fully developed at the time the manufacturers initialed the draft MOU, the manufacturers are extremely unlikely to sign up to a voluntary program with substantial outstanding technical issues and no identified approach for resolution. Moreover, the requirements under National LEV are no more stringent than the requirements under the California LEV program. EPA has granted a waiver of preemption under section 209 of the Act for the California LEV program after finding that the standards were technically feasible. See 58 FR 4166 (Jan. 13, 1993).

In addition, EPA strongly supports National LEV and is extremely unlikely to act in a manner that would risk dissolution of the program. For many areas of the country National LEV would be a very cost-effective program to reduce motor vehicle emissions of pollutants that harm public health and the environment. EPA has invested significant resources in facilitating the negotiations between the parties and developing the regulatory framework for the National LEV program, and the Agency would not lightly jeopardize the results of this effort.

*C. EPA Is Unlikely To Fail To Consider In-Use Fuels Issues To Allow Manufacturers To Opt Out of National LEV*

EPA also believes that the Agency is unlikely to act or fail to act in a manner that would allow the manufacturers to opt out of National LEV based on an offramp related to in-use fuels. As discussed above, EPA is proposing an additional offramp for manufacturers to address their concerns regarding the potential effects of fuel sulfur levels on the emission performance of National LEV vehicles. This offramp could be triggered if manufacturers assert that one of the identified potential problems related to fuel sulfur levels arises and EPA declines to consider allowing manufacturers to take the identified actions in response. EPA recognizes that the potential effects of fuel sulfur levels are of particular concern to manufacturers. If ongoing additional investigations indicate problems that need to be addressed, EPA will need to reassess the fuel sulfur issue in both the National LEV context and other EPA motor vehicle emission control programs, as discussed above in section VII.C. Given EPA's recognition of the manufacturers' concerns and the ongoing process for resolving them outside of the National LEV context, EPA believes it is highly unlikely that the Agency would fail to respond to a manufacturer's request to address any problems that are identified or decline to consider any reasonable solutions. In addition, EPA would have all the same incentives here to avoid taking any action that would jeopardize the benefits from the National LEV program, as discussed above for changes to Stable Standards.

## VIII. Additional Provisions

*A. Early Reduction Credits for Northeast Trading Region*

EPA is proposing that manufacturers may generate early reduction credits for sales of vehicles in the Northeast Trading Region (NTR) in MY1997 and MY1998, prior to the start of National LEV in MY1999. This would provide manufacturers added flexibility as well as create an incentive for them to introduce cleaner vehicles into this region before MY1999, thus providing air quality benefits sooner. EPA proposes to take the same approach to these early reduction credits in the NTR as the Final Framework Rule took to the early reduction credits earned in the 37 States before MY2001. Since the credits cannot be used or traded before MY1999, EPA is proposing to treat any credits earned in the NTR before MY1999 as if earned in MY1999 for annual discounting purposes. This is consistent with EPA's approach to early reduction credits in the 37 States and with California's approach to allowing early generation of credits. These credits will be subject to the normal discount rate starting with MY1999, meaning they will retain their full value for MY2000 and will be discounted from then on. In addition, EPA is proposing that, consistent with the approach to early reduction credits in the 37 States, early reduction credits in the NTR will be subject to a one-time ten percent discount applied in MY1999, as discussed below.

Manufacturers would be able to generate early reduction credits in the NTR by supplying vehicles with lower emissions than otherwise required during this time period in any OTC State that is in National LEV for MY1999 and later. Specifically, manufacturers would be able to generate credits for sales of TLEVs, LEVs, ULEVs and ZEVs sold in the OTR outside New York and Massachusetts in MY1997, and outside of New York, Massachusetts and Connecticut in MY1998, to the extent that such vehicles can be sold under EPA's cross-border sales policy.[32]

[32] See docket no. A–95–26, IV–A–03 for EPA's cross border sales policy. The current cross border sales policy allows sales of vehicles certified to California's emission standards in states contiguous to, or within 50 miles of, California and states that

Additionally, manufacturers could generate credits for sales of vehicles achieving a lower fleet average NMOG value than required under the state Section 177 Programs in New York and Massachusetts in MY1997, and in New York, Massachusetts and Connecticut in MY1998, assuming that those states have committed to National LEV for MY1999 and later. Manufacturers would not be able to take credit for vehicles sold to meet the applicable NMOG averages in New York, Massachusetts and Connecticut in MY1997 and MY1998, as that would be using vehicles required independent of National LEV to reduce the stringency of the National LEV requirements, and hence would be ''double-counting.''

EPA believes that there are substantial benefits to encouraging early introductions of cleaner vehicles. However, the Final Framework Rule included a discount for early reduction credits in the 37 States in part to address a concern that giving full, undiscounted credits for all early reductions may generate some windfall credits. See 62 FR 31214–31215. ''Windfall'' credits are credits given for emission reductions the manufacturer would have made even in the absence of an early credit program. The purpose of giving credits for early reductions is to encourage manufacturers to make reductions that they would not have made but for the credit program. Because credits can be used to offset higher emissions in later years, if manufacturers are given credits for early reductions they would have made even without a credit program, an early credit provision could decrease the environmental benefits of the program.

EPA is taking comment on the potential for windfall credits in the NTR and whether ten percent is an appropriate discount factor. Specifically, EPA requests comment on whether a lower number such as five percent or no discount factor would be more appropriate in light of the probability that manufacturers would introduce cleaner vehicles early absent early reduction credits, and the fact that National LEV is a voluntary program that will produce cleaner vehicles than EPA has the authority to require before MY2004. In addition, EPA requests comment on whether it should apply a uniform approach to early reduction credits in the 37 States and the NTR, or whether there are reasons to take different approaches in the two regions. EPA is also taking comment on whether ten percent (or some lower percent or zero) is the appropriate discount factor for early credits in the 37 states given that National LEV is now proposed to start in MY1999 instead of MY1997.

**B. Calculation of Compliance With Fleet Average NMOG Standards**

Various provisions in the Final Framework Rule assume that National LEV is a 49-state program. However, it is possible that National LEV would continue even if one or more OTC States opt out. Having less than 49 states in the National LEV program would require changes in the Final Framework Rule's provisions for determining compliance with the fleet average NMOG standards.[33]

EPA is proposing to modify the Final Framework Rule so that the NMOG fleet average calculation will not include vehicle sales in any OTC State that legitimately opts out once that opt-out becomes effective.[34] This would help ensure that states that opt into National LEV will receive the anticipated emissions benefits as long as they and the auto manufacturers participate in National LEV. The opposite approach (i.e., including all vehicle sales in any OTC States that are not participating in National LEV) would concentrate cleaner cars in those OTC States not in National LEV at the expense (environmentally) of OTC States committed to National LEV.

EPA is taking comment on whether to count in a manufacturer's fleet average NMOG calculation those California-certified vehicles that are sold under EPA's Cross Border Sales (CBS) policy in states that are participating in National LEV. A National LEV program consisting of less than all of the OTC States would necessitate the continuation of EPA's CBS policy for those manufacturers producing vehicles certified separately to Federal and California standards. This policy allows manufacturers to introduce into commerce California-certified vehicles in states that are contiguous to California or other states that have adopted the Section 177 Program. Thus, if a state were not participating in National LEV and instead had a Section 177 Program in effect, under the CBS policy, manufacturers would be allowed to sell California-certified vehicles in National LEV states bordering the non-participating state. This raises the issue of how to count such California-certified vehicles sold in those contiguous states in calculating the manufacturer's compliance with its National LEV fleet average NMOG requirement.

One approach to the fleet average NMOG calculation would be to include in the calculation all vehicle sales in the states participating in National LEV regardless of whether the vehicles are California or federally-certified. EPA is concerned that this might encourage manufacturers to sell only (or primarily) California-certified vehicles in the OTR (at least in MY1999 and MY2000), which might not be allowed under the Clean Air Act. It might also raise warranty and recall problems if those vehicles were found to violate LEV (but not Tier 1) standards in use. Another alternative would be to count only vehicles certified to federal standards in the fleet average NMOG calculation. EPA is also taking comment on whether it would be appropriate to count some (but not all) types of California-certified vehicles in the National LEV fleet average NMOG calculation. In any event, EPA would want to ensure that manufacturers would not include those vehicles sold in National LEV states to consumers residing in a state with a Section 177 Program in the manufacturers' compliance determinations for both the National LEV NMOG average and the applicable Section 177 Program; it would not be equitable to allow manufacturers to take credit for such sales for two independent programs.

*C. Certification of Tier 1 Vehicles in a Violating State*

If an OTC State violated its commitment to National LEV, in some instances National LEV would only require manufacturers to supply vehicles meeting Tier 1 emission standards in the violating state. EPA is proposing that, as one means of implementing this provision, EPA would allow a manufacturer to change the compliance levels of its vehicles sold in a violating OTC State through the submission of running changes to EPA. A running change is a mechanism manufacturers use to obtain approval

have a Section 177 Program in place. Thus, in the OTR for MY1997 and MY1998, manufacturers would be allowed to sell California vehicles in Maine, New Hampshire, Vermont, Massachusetts, New York, Rhode Island, Pennsylvania, and Connecticut.

[33] These changes would also be required if not all OTC States opted in. EPA continues to believe that National LEV should be a 49-state program. EPA notes that the auto manufacturers have repeatedly stated that all OTC States must opt into National LEV. However, if the auto manufacturers and the relevant OTC States were interested in National LEV proceeding even with less than 49 states participating, EPA would want National LEV to proceed. The air quality benefits of National LEV are too important not to do so.

[34] Similarly, if National LEV came into effect without all OTC States opting in, EPA is proposing that vehicle sales in those states would not be included in the NMOG average. EPA's proposed treatment of vehicle sales in OTC States that break their commitments is addressed in the proposed regulatory provisions and preamble discussion of manufacturer and OTC State offramps.

from EPA for modifications or additions to vehicles or engines that have already been certified by EPA but are still in production. By allowing a manufacturer to change the compliance levels of its vehicles through a running change only applicable to vehicles sold in a violating OTC State, EPA would give a manufacturer a procedure to respond to a state violation in a timely fashion and produce a real disincentive for an OTC State to violate its commitment.

Manufacturers currently use running changes in the federal certification process to obtain EPA approval of a change in specified vehicle configuration or an addition of a vehicle or engine to an approved engine family that is still in production.[35] A manufacturer may notify the Administrator in advance of or concurrent with making the addition or change. The manufacturer must demonstrate to EPA that all vehicles or engines affected by the change will continue to meet the applicable emission standards. This demonstration can be based on an engineering evaluation and testing if the manufacturer determines such testing is necessary. The Administrator may require that additional emission testing be performed if the manufacturer's determination is not supported by the data included in its running change application. EPA may disapprove a running change request, which could then require manufacturers to remedy vehicles or engines produced under the request.

EPA is proposing to exercise its current authority to allow manufacturers to use a running change to modify quickly the compliance level of their National LEV vehicles to Tier 1 tailpipe standards when the National LEV regulations allow a manufacturer to sell vehicles meeting Tier 1 tailpipe standards in a particular state. Running changes submitted under this proposal will reflect only the change in emission standards the vehicles are meeting. Vehicles sold in an OTC State that had violated its National LEV commitment will be treated as Tier 1 vehicles for purposes of federal enforcement requirements and warranty limits and would not count in the manufacturers' NMOG fleet average. A manufacturer providing vehicles that in a violating OTC State were complying at only Tier 1 levels and were meeting more stringent standards elsewhere would be required to modify its certification application to reflect the change and install a modified Vehicle Emission Control Information (VECI) label. The label would state that the vehicle complies with TLEV, LEV, or ULEV standards, but if such vehicle is sold in the specified violating OTC State, such vehicle is certified to Tier 1 tailpipe standards. The modified VECI label will highlight the distinction in vehicle compliance levels to consumers and the general public. EPA believes that running changes for this particular situation may be allowed by applying good engineering judgment, rather than additional emission testing, since a vehicle certified to National LEV TLEV, LEV, ULEV, or ZEV standards should also meet Federal Tier 1 standards. In the instance where an engineering evaluation would be insufficient to support a change, EPA would require additional data.

Vehicles complying only with Tier 1 tailpipe standards and sold in an OTC State that had violated its National LEV commitment would be treated as Tier 1 vehicles in that state for purposes of demonstrating compliance with federal requirements and SIP credits. These vehicles would be held only to the Tier 1 tailpipe standards for purposes of recall liability in that state. For example, a vehicle recall on a National LEV vehicle certified to LEV standards might not be subject to recall action in the violating state if the problem causing the recall did not cause the vehicles to exceed the Tier 1 standards.[36]

*D. Provisions Relating to Changes to Stable Standards*

The Final Framework Rule provided that, with certain exceptions, manufacturers would be able to opt out of National LEV if EPA changed a motor vehicle requirement that it had designated a ''Stable Standard.'' The Stable Standards are divided into two categories: Core Stable Standards and Non-Core Stable Standards. Core Stable Standards generally are the National LEV standards that EPA could not impose absent the consent of the manufacturers. Non-Core Stable Standards are other federal motor vehicle standards that EPA does not anticipate changing for the duration of National LEV. For both Core and Non-Core Stable Standards, EPA can make changes to which manufacturers do not object. For Non-Core Stable Standards, EPA can also make changes that do not increase the stringency of the standard or that harmonize the standard with the comparable California standard. EPA can make other changes to any of the Stable Standards, but such changes would allow the manufacturers to opt out of National LEV. See the Final Framework Rule for more detail on the specific Stable Standards and the offramp for manufacturers associated with changes to the Stable Standards. 62 FR 31202–31207.

EPA is proposing to make a few minor changes to the provisions for opt-outs based on a change to a Stable Standard. Under the Final Framework Rule, a manufacturer cannot opt out of National LEV based on a change to a Stable Standard unless the manufacturer has provided a written comment during the rulemaking on that change stating that it is sufficient to trigger a National LEV offramp. If EPA went ahead and made the change despite the objection, manufacturers generally would have to decide whether to exercise their opt-out option within 180 days of the occurrence of the condition triggering opt-out. EPA usually consults extensively with manufacturers regarding contemplated changes to the technical motor vehicle requirements to get information on the manufacturers' views regarding the feasibility and effectiveness of different requirements. Also, manufacturers have the opportunity during the comment period to alert EPA to any changes that manufacturers believe may be sufficient to provide an offramp. Thus, EPA is highly unlikely to make any change to a Stable Standard that may allow the manufacturers to opt-out without being aware of that potential and without carefully weighing the emissions benefits of the change relative to the emissions benefits of assuring the continuation of National LEV.

Nevertheless, in the final rule, EPA provided an additional protection to ensure that a change to a Stable Standard did not inadvertently provide an offramp. EPA has an opportunity to prevent an opt-out based on a change to a Stable Standard from coming into effect by withdrawing the change to the Stable Standard before the effective date

[35] See 40 CFR 86.079–32, 86.079–33, and 86.082–34.

[36] EPA is considering making significant changes to its existing federal compliance program, currently targeted to begin with MY2000 (these changes are referred to as CAP 2000, or Compliance Assurance Program 2000). While CAP 2000 is still pre-proposal, EPA has established a docket (A–96–50), which contains information on the concepts currently being considered. Once promulgated, CAP 2000 may have some potential ramifications for quickly changing certification designations for National LEV vehicles sold in an OTC State that had violated its National LEV commitment. In particular, EPA is considering significantly streamlining its current certification program and requiring manufacturers to perform an in-use verification testing program to demonstrate that the streamlined certification procedures are capable of predicting in-use compliance. This program would apply to all federally certified vehicles, including Tier 1 vehicles. Thus, CAP 2000 could also possibly apply to any National LEV vehicles that were only required to comply with Tier 1 tailpipe standards under the proposal outlined above.

of the opt-out. In addition, to make EPA's ability to cure the offramp effective, the final rule delays the earliest possible effective date of an opt-out based on a change to a Core Stable Standard. Such an opt-out could not become effective until the model year named for the second calendar year following the calendar year in which the manufacturer opted out.

EPA is proposing to delete the provisions allowing the Agency the ability to cure under these circumstances, and is proposing to set the earliest effective date of an opt-out based on a change to a Core Stable Standard to be the same as the earliest effective date of an opt-out based on a violation of an OTC State commitment to National LEV. Thus, an opt-out based on an EPA change to a Core Stable Standard or an OTC State violation of its commitment to National LEV could become effective beginning in the ''next model year.'' [37] See section VI.A above for further discussion of the effective date of opt-outs based on an OTC State violation of its commitment to National LEV.

EPA believes that providing the Agency a formal opportunity to cure a change to a Stable Standard adds unnecessary complexity to the program. Also, if an offramp were triggered, EPA's ability to cure extends the period of uncertainty as to whether National LEV would remain in effect, which is a destabilizing influence on the program. EPA believes it is highly unlikely that the Agency would change a Stable Standard so as to trigger an offramp. Nevertheless, in the hypothetical situation where one of those conditions triggering an offramp occurred, EPA believes that it would be in all of the parties' best interests to know as soon as possible whether any manufacturer intended to opt-out, and if so, when that opt-out would become effective. Adding yet another layer of complexity to the opt-out provisions undermines that goal.

In the Final Framework Rule, EPA stated that, if a manufacturer were to take an offramp because EPA changed a Stable Standard, the applicable state or federal standards would apply. At that time, EPA did not discuss in detail the timing for when state or federal standards would apply. Today EPA is proposing that, if a manufacturer validly opted out of National LEV based on an EPA change to a Stable Standard, once the manufacturer's opt out was effective, the manufacturer's obligations would be determined the same as if the manufacturer had opted out because an OTC State failed to submit its National LEV SIP revision on time (except that no state could be treated as a violating state). The manufacturer would be subject to any backstop Section 177 Programs for which the two-year lead time requirement of section 177 had been met (running from the date the state adopted the backstop program), or would be subject to Tier 1 requirements in states without such programs. Manufacturers would be subject to backstop ZEV mandates once the two-year lead time set forth in section 177 had passed (running from the date of the manufacturer's opt-out notification). To the extent that these regulations would provide a manufacturer with less than the two-year lead time set forth in section 177, the manufacturer waives that protection by opting into National LEV and then setting an effective date in its opt-out notification that provides for less than two-years lead time.

*E. Nationwide Trading Region*

The National LEV program, as initially proposed and as set forth in the Final Framework Rule, requires manufacturers to determine compliance with the fleet average NMOG standards for the two classes of National LEV vehicles in two separate trading regions: The OTC States and the 37 States making up the rest of the country (except California). Credits and debits generated under the program are specific to the region of creation.

Several factors led the parties to support and EPA to establish separate trading regions in the Final Framework Rule. In part, the two regions were set up because the National LEV program starts in the OTR before it applies in the rest of the country. Additionally, at the time the two regions were proposed, the separate regions were designed in part to meet the OTC States' legal obligations under the OTC LEV SIP call. The OTC States were concerned that manufacturers would provide a different, higher emitting mix of vehicles in the OTR than they would in the 37 States region if they were allowed to average their vehicle sales over a nationwide region. Also, to ensure that the OTC States would receive the intended benefit of the program's earlier start in the OTR, the separate trading regions facilitated the offset of debits generated in the OTR through vehicle introductions or credits earned in the OTR.

The elimination of the legal requirement to have National LEV provide equivalent emission reductions to the OTC LEV program and the change in program start dates for both National LEV and OTC State Section 177 Programs allows EPA to reconsider the necessity of establishing separate trading regions.[38] As a result of the court decision, EPA no longer is required to demonstrate that National LEV provides emission reductions at least equivalent to those from the OTC LEV program. The main purposes in having two separate trading regions were to ensure that the manufacturers meet certain fleet average NMOG standards in the OTR for purposes of the equivalency requirement and to provide the actual emissions reductions in the OTR that the OTC States would expect to receive upon opting into National LEV. The absence of the legal requirement to find equivalency means that separate trading regions are not necessary to demonstrate that National LEV will achieve emissions reductions in the OTR at the level that would be provided by compliance with the fleet average NMOG requirements in the OTR alone. Additionally, in comparison to individual OTC State adopted Section 177 Programs, National LEV starting in MY1999 provides greater emission reductions in the OTR. Thus, EPA does not believe that two trading regions are necessary to achieve the actual emissions reductions expected in the OTR under National LEV. Finally, EPA believes that even with one trading region, manufacturers' fleets in the OTR will comply with the fleet average NMOG standards, as discussed below.

EPA is proposing to establish a nationwide trading region (not including California), starting in MY2001. For MY1999 and MY2000, manufacturers will have to demonstrate compliance with National LEV standards only in the OTR. For MY2001 and later, when the program is introduced nationwide, EPA is proposing that there be one compliance region. EPA believes this will not detrimentally affect the environmental benefits of National LEV in the OTR and will reduce manufacturers' and EPA's administrative burden in demonstrating compliance with the National LEV fleet average NMOG standards. A discrepancy between the fleet sold in the OTR and outside the OTR would only be possible if a manufacturer's fleet was made up of a number of engine families certified to Tier 1, TLEV, and LEV standards and vehicle buying patterns differed significantly between

[37] The ''next model year'' is the model year named for the calendar year following the calendar year in which the event allowing opt-out occurred.

[38] EPA could have reconsidered the need for two separate trading regions prior to promulgating the Final Framework Rule, but it did not do so. EPA thought it best to take comment on combining the two trading regions before doing so.

the Northeast states and other regions of the country. EPA does not believe that vehicle sales patterns of the relevant vehicles will differ dramatically between the two regions. Moreover, for there to be even a possibility of introducing a greater percentage of dirtier vehicles in the OTR than in the rest of the country, a manufacturer's fleet after MY2000 would have to include Tier 1 vehicles and TLEVs, as well as LEVs. EPA does not believe significant numbers of Tier 1 vehicles and TLEVs will be sold in the OTR after MY2000, since other provisions of the National LEV program will act to reduce the incentive to sell substantial numbers of such vehicles at that time. Beginning in MY2001, National LEV regulations prohibit manufacturers from offering for sale any Tier 1 vehicles and TLEVs in the NTR unless the same engine families are certified and offered for sale in California in the same model year. See 62 FR 31218 (June 6, 1997).[39] California's more stringent fleet average NMOG standard and SFTP phase-in requirements, as described in section IX, will act to limit the number of Tier 1 and TLEV engine families certified and sold in California, and, therefore, the number sold in the NTR.

Additionally, even though the National LEV fleet average NMOG standard is not as stringent as California's, the 0.075 g/mi and 0.100 g/mi standards applicable for MY2001 and later will make it difficult for manufacturers to include substantial numbers of Tier 1 vehicles and TLEVs in their fleet and still comply with the National LEV NMOG fleet average standard. For example, manufacturers would have to build five ULEVs for every one Tier 1 vehicle produced, and approximately three ULEVs for every two TLEVs produced, to comply with the 0.075 g/mi fleet average NMOG standard. Therefore, EPA believes there are strong incentives for manufacturers to limit or even eliminate the production and sale of Tier 1 vehicles and TLEVs in the NTR in MY2001 and later, which would result in a nationwide vehicle fleet of essentially LEVs.

Compliance under one nationwide trading region versus two separate regions for MY2001 and later model years will reduce the manufacturers' compliance burden by eliminating the need to specifically track vehicle sales to two separate regions and maintain two separate tallies of credits and debits specific to the two regions. A single trading region will also reduce EPA's administrative burden in determining whether manufacturers are complying with the applicable fleet average NMOG standards. Given a nationwide fleet that is all or almost all LEVs, a separate trading region for the OTR would not have any significant air quality benefit and would add additional unnecessary complexity to the National LEV program.

Under today's proposal, National LEV would continue to include the NTR, which would apply for MY1999–2000 and cover vehicles sold in the OTC States. The second region would be the All States Trading Region (ASTR), which would include all states in National LEV except for California, and apply for 2001 and later model years. Manufacturers would demonstrate compliance with the fleet average NMOG standards in these two regions under the provisions set forth in the Final Framework Rule. EPA is proposing to delete the 37 State trading region that was finalized in the Final Framework Rule.

The National LEV regulations would still need to address how to treat credits and debits generated before MY2001. EPA is proposing that manufacturers could continue to generate early reduction credits in the states outside the NTR before MY2001 to apply to the ASTR from MY2001 on. Manufacturers could also use credits generated in the NTR for demonstrating compliance in the ASTR from MY2001 on at the same value as if the manufacturer had used them in the NTR under the Final Framework Rule. However, EPA is proposing that a manufacturer could not apply early reduction credits generated outside the NTR to offset any debits generated in the NTR before MY2001. Using credits generated outside the NTR to offset debits generated in the NTR during MY1999 and MY2000 would decrease the environmental benefits that should accrue to the NTR. EPA is taking comment on two possible methods to ensure that any debits in the NTR from MY1999 or MY2000 are made up in the NTR. One possibility is for EPA to require compliance with fleet average NMOG standards in the NTR and the 37 States after MY2000 if a manufacturer has outstanding debits in the NTR after calculating its compliance with the MY2000 fleet average NMOG standards for the Class A and B vehicle categories. Such a manufacturer would be required to meet separate fleet average NMOG standards in the OTR and 37 States until the model year following the model year for which it has eliminated the outstanding debits. Another possibility is that an All States Trading Region would start for all manufacturers in MY2001. A manufacturer with debits in the NTR after MY2000, however, would be required to make up those debits in the NTR. Unless a manufacturer bought NTR-specific credits, sufficient to offset its NTR debit on a timely basis, the manufacturer would need to calculate an NTR NMOG average for MY2001 and apply any NTR-specific credits to its NTR debits. Under no circumstance could credits outside the NTR be used to offset NTR debits from MY2000 or MY1999.

EPA is also taking comment on allowing a manufacturer to demonstrate compliance with the fleet average NMOG standards using actual production data in lieu of actual sales data if the manufacturer is demonstrating compliance with the fleet average NMOG standards in the ASTR. In the Final Framework Rule, EPA included regulations allowing manufacturers to use production data in lieu of sales data if a manufacturer's entire fleet, apart from California, was certified to LEV or cleaner standards. EPA was concerned about allowing the use of production data without these restrictions because of the need to demonstrate compliance in two separate trading regions. However, if EPA establishes a nationwide trading region, EPA is taking comment on allowing manufacturers to demonstrate compliance using production date rather than sales date, even if the manufacturer's fleet is not all LEV or cleaner vehicles. A manufacturer would need to petition EPA to allow production volume to be used in lieu of actual sales volume and would have to submit the petition to EPA within 30 days after the end of the model year. EPA would grant such petition if the manufacturer establishes, to the satisfaction of the Administrator, that production volume is functionally equivalent to sales volume. Manufacturers would still have to keep sales data in the NTR to demonstrate compliance with the ban on the sale of Tier 1 and TLEV engine families if such engine families are not certified for sale

[39] To meet this requirement, manufacturers will not be required always to sell exactly the same engine families in both California and the NTR because in some instances, that would not be possible. In the specific case of Tier 1 engine families, National LEV maintains Federal Tier 1 standards while California has its own Tier 1 standards, so a manufacturer could not sell an identical California Tier 1 vehicle as a Federal Tier 1 vehicle in the NTR under the National LEV program. Therefore, for purposes of this provision, EPA will consider a National LEV Tier 1 or TLEV engine family the same as a California Tier 1 or TLEV engine family if the National LEV engine family has the same technology (hardware and software) as the comparable California engine family. A manufacturer could always certify a Tier 1 or TLEV engine family as a 50-state family and avoid this issue.

in California for the same model year. EPA has previously allowed manufacturers to use production volume in lieu of sales volume as part of the Tier 1 standards phase-in.

*F. Elimination of Five-Percent Cap on Sales of Tier 1 Vehicles and TLEVs in the OTR*

EPA's Final Framework Rule codified the OTC States' and manufacturers' recommendation that National LEV include provisions limiting the sale of Tier 1 vehicles and TLEVs in the NTR after MY2000. The first provision is that manufacturers may sell in the NTR Tier 1 vehicles and TLEVs only if the same or similar engine families are certified and offered for sale in California as Tier 1 vehicles and TLEVs. See section VIII.E above for further discussion on this provision. The second provision is a five-percent cap on sales of Tier 1 vehicles and TLEVs in the NTR starting in MY2001, which allows all manufacturers to sell Tier 1 vehicles and TLEVs in the NTR to the extent permitted under the first limitation as long as the overall Tier 1 vehicle and TLEV fleet does not exceed five percent of the National LEV vehicles sold in the NTR. EPA is proposing to delete the five-percent cap provision. The parties originally developed this provision to address OTC States' concerns that National LEV could have a disproportionate effect on $NO_X$ emissions when compared to OTC state-by-state adoption of Section 177 Programs. See 62 FR 31217. EPA is now proposing to delete this provision because of the change in the OTC States' legal obligation since this provision was proposed and because of the additional administrative burden it would entail if EPA were to adopt today's proposal to have a single trading region starting in MY2001. Furthermore, EPA believes the five-percent cap would not provide any air quality benefit given the expected fleet make-up after MY2000 and the other limitation on sales of these vehicles in the NTR.

First, the court reversal of the requirement that all OTC States adopt Section 177 Programs effective in MY1999, means there is no longer a legal requirement that EPA find that National LEV is equivalent to state Section 177 Programs throughout the OTR. Additionally, as discussed above (see section IV comparing NLEV and OTC LEV emissions reductions), the expected benefits in the OTR of National LEV as compared to OTC State adopted Section 177 Programs has increased. Therefore, there is no legal need and less practical need for a five-percent cap to control $NO_X$ emissions.

Second, EPA believes the five percent cap is not necessary because it expects manufacturers will not introduce significant numbers of Tier 1 vehicles and TLEVs after MY2000 in the national, let alone the Northeast, market. See section VIII.E above for EPA's rationale for this belief. This means that National LEV will not have a $NO_X$ penalty when compared to OTC State adopted Section 177 Programs. A National LEV fleet, made up primarily of LEV vehicles, will have similar effects on $NO_X$ emissions when compared to a CAL LEV fleet consisting primarily of LEV and ULEV vehicles since both types of vehicles have the same $NO_X$ emission standards. EPA believes that any sales of Tier 1 vehicles and TLEVs in the NTR after MY2000 will make up less than five percent of the fleet in any instance, and does not believe having a separate program to ensure such sales limits is needed.

Finally, even if there were some benefit to the NTR from a five-percent cap, EPA believes the benefit would be so minimal (at best) that it would not justify the administrative burden given EPA's proposal for one trading region after MY2000. Under EPA's proposal for an All State Trading Region for 2001 and later model years and the proposal to allow manufacturers to demonstrate compliance through production data, manufacturers would not need to report state-specific sales data, except to demonstrate compliance with the five-percent cap.

*G. Technical Corrections to Final Framework Rule*

The Agency is also proposing today to make several minor technical corrections to the National LEV regulations issued in the Final Framework Rule. As already noted, a number of changes must be made to reflect the proposed start of the program in the 1999 model year, rather than the 1997 model year as was used as a placeholder in the June 6 Final Framework Rule. In addition, EPA is aware of several other errors and omissions that require correction, and is continuing to evaluate the regulations to determine the need for additional such corrections. Errors and omissions identified to date include a missing ''0–3750'' in the Loaded Vehicle Weight column of Table R97–8 (62 FR 31249), and incorrect full useful life in-use formaldehyde (HCHO) standards for LEVs and ULEVs for light light-duty trucks of 3751–5750 lbs loaded vehicle weight in Table R97–13 (62 FR 31250). In the latter case, the LEV and ULEV standards were reported as 0.018 and 0.014 grams per mile, respectively, when in fact they should have been 0.023 and 0.013 grams per mile, respectively. EPA is not including proposed regulatory text for these changes with today's action, but anticipates making these and similar minor corrections with the finalization of today's proposal later this year. In addition, a June 24, 1997 letter from the American Automobile Manufacturers Association (AAMA) and Association of International Automobile Manufacturers (AIAM) (available in the public docket for review) suggests numerous other technical corrections to the regulations EPA promulgated on June 6, 1997. The technical corrections detailed by AAMA/AIAM will be reviewed by EPA, and to the extent that they are necessary and appropriate they will be implemented when this rulemaking is finalized later this year.

In the Final Framework Rule, EPA required manufacturers to track vehicles to the ''point of first sale'' for purposes of determining compliance with fleet average NMOG standards. See 62 FR 31212. EPA defined ''point of first sale'' as ''the location where the completed LDV or LDT is purchased'' and it ''may be a retail customer, dealer, or secondary manufacturer.'' See 40 CFR 86.1702–97(b). EPA recognized that requiring manufacturers to always track vehicle sales to the ultimate purchaser would add an additional burden on manufacturers without having any significant effect on air quality.

Requiring manufacturers to track vehicles to the point of first sale was intended to impose similar requirements on manufacturers as those associated with EPA's Tier 1 standard phase-in compliance requirements found in 40 CFR 86.094–8 and 86.094–9. In the Tier 1 program, manufacturers could demonstrate compliance ''based on total actual U.S. sales of light-duty vehicles of the applicable model year by a manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale.'' See 40 CFR 86.094–8(a)(1)(i)(B)(*1*)(*i*). EPA believes the National LEV vehicle sales tracking requirements operate in the same manner as those found in the Tier 1 regulations, but the auto manufacturers have notified EPA of their concern that National LEV imposes different requirements. (Document available in docket A–95–26.)

To eliminate confusion about the required level of vehicle tracking necessary to demonstrate compliance with National LEV fleet average NMOG standards, EPA is proposing to modify the definition of ''point of first sale'' in the National LEV program to include the ''point of first sale'' language found in

the Tier 1 regulations. EPA did not intend to limit ''point of first sale'' entities to those specifically listed in the National LEV regulations. EPA also does not intend to limit a manufacturer to tracking vehicles only to the point of first sale if a manufacturer decides further tracking gives it a more accurate account of vehicle sales in the different trading regions or its current vehicle tracking system is set up to track vehicles beyond the point of first sale. However, as noted in the Final Framework Rule, EPA does not believe this additional level of tracking vehicles is necessary.

## IX. Supplemental Federal Test Procedure

### *A. Background*

The Federal Test Procedure (FTP) is the vehicle test procedure historically used by EPA and the California Air Resources Board (CARB) to determine the compliance of light-duty vehicles and light-duty trucks with the conventional or ''on-cycle'' exhaust emission standards. Using the FTP, emissions performance is tested while the vehicle is driven over a ''typical'' driving schedule, using a dynamometer to simulate the vehicle-to-road interface. Pursuant to the requirements of section 206(h) of the CAA, EPA recently promulgated revisions to the Federal Test Procedure to make the test procedure better represent the manner in which vehicles are actually driven (61 FR 54852, October 22, 1996). The primary new element of the revisions was the addition of a Supplemental Federal Test Procedure (SFTP) with accompanying emission standards designed to address shortcomings of the conventional FTP in the representation of aggressive driving behavior, rapid speed fluctuations, driving behavior following startup, and use of air conditioning. In addition, a new set of requirements designed to more accurately reflect real road forces on the test dynamometer affects both the SFTP and the preexisting conventional FTP. Absent any modifications that might result due to implementation of the National LEV Program, these new requirements are to be phased in, applying to 40 percent of a manufacturer's fleet of light-duty vehicles and light light-duty trucks in MY2000, 80 percent in MY2001, and 100 percent in MY2002. A similar phase-in schedule for heavy LDTs begins in MY2002. The SFTP emission standards promulgated by EPA are appropriate for vehicles meeting the so-called ''Tier 1'' on-cycle emission standards; EPA did not propose LEV-stringency off-cycle standards as part of its FTP revisions or as part of an earlier National LEV rulemaking.

EPA and CARB coordinated closely their review of the FTP, their research efforts, and the development of their respective off-cycle policies. On April 23, 1997, CARB published a proposal detailing their approach to addressing off-cycle emissions in the State of California.[40] Following a comment period that remained open through May 6, 1997, CARB released a notice of public hearing accompanied by a staff report regarding its proposed adoption of SFTP test procedures and standards (''Staff Report'').[41] The proposal has four basic elements to it: test procedures, emission standards for LEVs and ULEVs, emission standards for Tier 1 vehicles and TLEVs, and a phase-in schedule. CARB adopted SFTP requirements largely consistent with their proposal at a public hearing on July 24, 1997. Any additional minor changes that arise in subsequent stages of CARB's regulatory process will be addressed in the National LEV supplemental final rule.

EPA stated in the National LEV Final Framework Rule its intent to harmonize the SFTP requirements of the National LEV program with California once California completes the adoption of such requirements under its LEV program. Given that the finalization of today's proposal will occur sometime after the CARB public hearing, EPA is optimistic that the timing will allow the CARB and National LEV SFTP programs to be largely harmonized with the completion of the supplemental final National LEV rulemaking initiated by today's proposal. However, pending completion of that harmonization, the federal SFTP requirements that have already been promulgated are the default requirements for vehicles in the National LEV program. In today's notice, as further described below, EPA is proposing to adopt the CARB SFTP substantially as outlined by CARB in its June 6, 1997 Staff Report and as adopted at their July 24, 1997 public hearing.[42]

### *B. Elements of the CARB Proposal and Applicability Under National LEV*

#### 1. Test Procedure

CARB adopted high speed, high acceleration, and air conditioner supplemental test procedures that are in all respects identical to the procedures adopted by EPA. EPA anticipates that the remaining CARB rulemaking process is highly unlikely to make any changes to the test procedure elements, and that

[40] Draft Regulatory Measure to Control Emissions During Non-Federal Test Procedure Driving Conditions From Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles Under 8,500 Pounds Gross Vehicle Weight Rating, Mail-Out #MSC 97–06, April 23, 1997. Available in the public docket for review, and also at http://arbis.arb.ca.gov/msprog/macmail/macmail.htm.

[41] Notice of Public Hearing to Consider Adoption of New Certification Tests and Standards to Control Emissions from Aggressive Driving and Air-Conditioner Usage for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles Under 8,501 Pounds Gross Vehicle Weight Rating, Mail Out #97–13, May 27, 1997. Available in the public docket for review, and also at http://arbis.arb.ca.gov/msprog/macmail/macmail.htm#msc9713.

[42] An additional issue arises if for some reason it becomes impossible, impractical, or undesirable for the National LEV program to harmonize with the CARB SFTP requirements. As the Agency recognized in the October 22, 1996 final rule promulgating the SFTP, the phase-in schedule of the new standards and test procedures contained in that rule ''could create an additional burden for auto manufacturers if the [National LEV] Program goes into effect as proposed with a MY2001 implementation nationwide'' (61 FR 54854). As noted above, the new SFTP requirements, which are of a Tier 1 level of stringency, start phasing in with MY2000. In that model year, if the National LEV Program is in effect, vehicles in the OTR will be a mixture of TLEVs, LEVs, and ULEVs that is driven by the National LEV fleet average NMOG requirements. Outside the OTR, however, many MY2000 vehicles are expected to be Tier 1 technology vehicles (except for possibly in some of the states bordering OTC States), which would be the applicable set of emission standards in that model year. A minimum of forty percent of a manufacturer's nationwide fleet would be required to meet the SFTP emission standards. However, if the National LEV Program continues in effect, the program would transition to a nationwide program with MY2001. In that model year the fleet average NMOG standard would be 0.075 grams/mile-equivalent to a fleet of 100 percent LEVs. The effect of the nationwide implementation of National LEV at this fleet average level would be essentially to make Tier 1 vehicles obsolete. In MY2001 a minimum of eighty percent of a manufacturer's fleet must meet the new federal SFTP standards. Under such a scenario, the auto manufacturers would have to invest in bringing a number of Tier 1 engine families into compliance with the federal SFTP standards for MY2000 only to transition to a fleet of LEVs in the following model year. EPA believes that the environmental benefit of this investment would be minimal, and the costs to industry would be considerable. Consequently, under the scenario where the CARB SFTP does not apply to National LEV vehicles and the default federal requirements apply, EPA does not believe it is practical or necessary to hold manufacturers to the 40 percent phase-in in MY2000 if the affected vehicles are essentially phased out in the following model year. However, EPA does not view a shifting of the entire phase-in schedule forward by a model year (e.g., the 40 percent requirement would apply in MY2001) as a necessary or desirable solution to the problem. Instead, EPA is proposing to waive the MY2000 requirement, but continue the existing phase-in with the existing MY2001 and MY2002 requirements. While EPA proposes this as a resolution to an issue that arises under a specific scenario, this is not addressed in the proposed regulatory text; which assumes successful harmonization with the CARB SFTP requirements (making such an adjustment to the phase-in of the federal requirements moot, as described below). Furthermore, this proposal would only apply if National LEV is in effect. If National LEV does not come into effect, the current phase-in schedule would continue to apply.

their final rule will maintain complete harmonization in this regard. The two agencies cooperated closely in the development of the driving schedules and testing protocols and placed significant emphasis on total alignment throughout the development process. Therefore, EPA proposes that the SFTP test procedures for all vehicles covered by National LEV would be those currently contained in federal regulations (40 CFR 86.158, 86.159, 86.160, 86.161, 86.162, 86. 163, and 86.164).

2. Emission Standards

California adopted two sets of emission standards, one applicable to LEVs, ULEVs, and super ULEVs (SULEVs), and the other applicable to Tier 1 vehicles and TLEVs. However, the only SULEVs in CARB's regulations are in their Medium-Duty Vehicle category, a class of vehicles not covered by the National LEV Program, and consequently not covered in the following discussion of emission standards or in today's proposed regulations.

*a. LEVs and ULEVs.* For each of the affected vehicle weight categories, CARB adopted a set of SFTP certification standards that applies to LEVs and ULEVs (see Table 1). Due to limited data on emissions and appropriate reactivity adjustment factors, CARB exempted alternative fuel vehicles from these standards, applying them only to gasoline, diesel, and fuel-flexible vehicles while operating on gasoline or diesel fuel. These standards would only apply at 4,000 miles, a significant departure from EPA's traditional method of standard setting. These standards have already received the support of the auto industry. In conjunction with the low-mileage standards, CARB maintains that there be no in-use vehicle compliance requirements (recall testing) for SFTP standards, which CARB admits raises the issue of the adequacy of controls on in-use emissions. Although CARB believes that in-use testing based on the preexisting conventional FTP, combined with the efficacy of On-Board Diagnostics II (OBD II) systems, is likely to capture emissions increases occurring under off-cycle conditions, they recognize the risk that ''in-use vehicles may show [off-cycle] emission deterioration not paralleled by deterioration over the FTP.'' Because of this, CARB plans to assess in-use off-cycle emissions and implement 50,000-mile and 100,000-mile standards if necessary, although they have committed to maintaining stability in the standards through the phase-in period.

TABLE 2.—PROPOSED US06 AND SC03 4,000 MILE CERTIFICATION STANDARDS FOR LEVS AND ULEVS

| Vehicle type | Loaded vehicle weight (lbs.) | US06 (g/mi) | | SC03 (g/mi) | |
|---|---|---|---|---|---|
| | | NMHC+NOX | CO | NMHC+NOX | CO |
| LDV | All | 0.14 | 8.0 | 0.20 | 2.7 |
| LDT | 0–3,750 | 0.14 | 8.0 | 0.20 | 2.7 |
| | 3,751–5,750 | 0.25 | 10.5 | 0.27 | 3.5 |

EPA is proposing today to adopt the standards shown in Table 1 as the SFTP standards applicable to LEVs and ULEVs covered under the National LEV Program. These standards will be applied to the National LEV Program in the same manner as adopted by CARB, in that they apply at 4,000 miles and there will be no in-use enforcement to these SFTP standards for LEVs and ULEVs.

Although the low-mileage approach to standard-setting is unconventional, EPA believes that the incorporation of the above standards into the NLEV program can be justified technically, environmentally, and legally. The National LEV provisions are structured to ensure that vehicles certified under National LEV will continue to meet all of the federal requirements for Tier 1 vehicles and hence meet the minimum requirements under the Act, in addition to the more stringent National LEV requirements. Section 202(a) of the Act requires motor vehicle standards to apply for the full useful life of the vehicle, which is 100,000 miles, pursuant to section 202(d). The Tier 1 standards, both FTP and SFTP, apply to federal Tier 1 vehicles at 50,000 miles and 100,000 miles. Thus, the statute requires that National LEV LEVs and ULEVs also meet the Tier 1 SFTP requirements at 50,000 and 100,000 miles.

EPA carefully assessed the level of the standards adopted by CARB for LEVs and ULEVs, and found that they are of a sufficient stringency to provide emission reductions significantly greater than those that would be achieved by applying full useful life Tier 1 SFTP standards to LEVs and ULEVs. Moreover, for LEVs and ULEVs the full useful life National LEV FTP standards should prevent deterioration of the same types of systems that control emissions over the SFTP cycles. Therefore, the combination of the stringent SFTP 4,000 mile standard and the full useful life LEV and ULEV FTP standards provides considerable confidence that these vehicles will be certified at a low emission level and will not deteriorate during their useful life to a point where they may be emitting above the Tier 1 100,000 mile SFTP levels.

While EPA is confident that the combination of requirements applicable to LEVs and ULEVs means that they would not emit above the Tier 1 100,000 mile SFTP levels, manufacturers are concerned that structuring the regulations to apply the Tier 1 100,000 mile SFTP standards to LEVs and ULEVs would impose a substantial additional burden on the manufacturers for no environmental benefit. If EPA were to apply the full useful life Tier 1 100,000 mile SFTP standards to LEVs and ULEVs, manufacturers would need to conduct additional testing for each manufacturer to ensure compliance with such standards. While manufacturers share EPA's confidence that the vehicles will meet the full useful life Tier 1 SFTP standards, nonetheless manufacturers have stated that they would have to conduct full useful life SFTP tests to protect against any possibility of enforcement liability. Alternatively, manufacturers might choose not to opt into the National LEV program. In either case, manufacturers would incur substantial additional burdens.

In light of these factual determinations, EPA believes that a de minimis exemption to the statutory requirements is appropriate here, which would allow EPA to set SFTP standards for LEVs and ULEVs at 4,000 miles only. In a situation such as this where Congress has not drafted a statute so rigidly as to preclude a de minimis exemption, the courts have held that agencies have implied authority to craft a de minimis exemption from a statutory provision ''when the burdens

of regulation yield a gain of trivial or no value.'' See *EDF* v. *EPA*, 82 F.3d 451 (DC Cir. 1996); *Alabama Power* v. *Costle*, 636 F.2d 323 (DC Cir. 1979). EPA believes that applying the Tier 1 level stringency 50,000 and 100,000 mile SFTP standards to LEVs and ULEVs would produce no or trivial additional environmental benefit because EPA is confident the vehicles would meet those emissions levels even in the absence of enforceable standards. Such standards would also impose substantial additional costs on manufacturers. Consequently, EPA believes a de minimis exemption from the statutory requirement to set full useful life SFTP standards for LEVs and ULEVs under National LEV is appropriate here.

*b. Tier 1 Vehicles and TLEVs*. Because the extensive test programs culminating in CARB's development of SFTP standards focused on developing standards for LEVs and ULEVs, CARB proposed to apply to Tier 1 vehicles and TLEVs standards identical to those promulgated by EPA for Tier 1 vehicles. As under the federal regulations, these standards would apply at 50,000 and 100,000 miles, and vehicles certifying to these standards would face an in-use compliance requirement. Additionally, CARB also proposed to maintain EPA's higher NMHC+$NO_X$ standard for diesel vehicles, as well as EPA's exemption of alternative fuel Tier 1 vehicles and TLEVs from compliance with the SFTP standards.

CARB's treatment of Tier 1 vehicles and TLEVs, however, remains an issue of some controversy. Auto manufacturers have approached CARB staff and requested consideration of 4,000-mile standards for Tier 1 vehicles and TLEVs, which would align the certification requirements of these vehicles with the requirements that apply to LEVs and ULEVs. The methodology suggested by the auto manufacturers for establishing 4,000-mile standards for Tier 1 vehicles and TLEVs is to increase the proposed LEV SFTP emission standards (Table 1) by the ratio of Tier 1 to LEV emission standards applicable to the conventional FTP. EPA supports the current CARB proposal, in that it maintains what EPA strongly believes are appropriate standards for Tier 1 vehicles. CARB pursued low-mileage standards for LEVs and ULEVs for several reasons, but largely because the value of the data they had collected at high mileage for standard-setting became questionable. EPA did not face similar problems with standard-setting, and was able to establish 50,000-mile and 100,000-mile standards that are well-justified and appropriate for Tier 1 vehicles. It has been EPA's experience with pre-LEV technologies that full useful life standards with in-use recall liability are important for ensuring clean and durable vehicles. In addition, part of the justification for providing a de minimis exemption for LEVs and ULEVs from the statutory requirement that the Tier 1 requirements apply for the full useful life of these vehicles is that the LEV and ULEV 4,000 mile standards are significantly more stringent than Tier 1 standards, so the vehicles would have to deteriorate drastically to exceed the full useful life Tier 1 standards in use. This argument would not apply to Tier 1 vehicles with 4,000 mile standards calculated as the manufacturers have suggested. Consequently, today's notice proposes that the NLEV program adopt CARB's proposed treatment of Tier 1 vehicles and TLEVs.

3. Implementation Schedule

As noted earlier, EPA's SFTP requirements applicable to Tier 1 vehicles would begin to phase in with the 2000 model year, achieving 100 percent compliance in the 2002 model year. The implementation schedule proposed by CARB is somewhat different, in that it starts later and extends for four years. CARB initially considered maintaining the federal phase-in rate for Tier 1 vehicles and TLEVs, while subjecting LEVs and ULEVs to the longer and later schedule, but elected instead to propose phasing in all vehicle emission categories at the same rate. Although Tier 1 vehicles and TLEVs are certified to standards of different stringency than LEVs and ULEVs, CARB proposed to allow the number of vehicles from both groups to be combined for the purpose of determining compliance with the phase-in schedule. CARB proposed this approach because of the concern that, if a separate phase-in schedule was maintained for Tier 1 vehicles and TLEVs, manufacturers would have to dedicate resources to making Tier 1 vehicles SFTP-compliant when the rest of the California LEV program is causing Tier 1 vehicles to phase out in the fairly short term. In their Staff Report, CARB acknowledges that Tier 1 vehicles and TLEVs will be phasing out due to the decreasing NMOG fleet average requirements and they specifically structure their SFTP program to allow these vehicles time to phase out without having to comply with SFTP standards. CARB prefers to allow manufacturers to focus efforts on development of LEVs and ULEVs that comply with LEV/ULEV SFTP standards, which will be the predominant vehicles in California, rather than expend effort on vehicles that will be phasing out in California in the time frame of their proposed SFTP phase-in. While allowing Tier 1 vehicles an adequate opportunity to phase out, CARB also ensures an adequate phase-in of LEVs and ULEVs complying with the SFTP be ensured. They achieve this by requiring that the percentage of LEVs and ULEVs meeting the SFTP requirements also meet the required phase-in schedule. This implies that meeting the phase-in percentage with the subset of the fleet made up of LEVs and ULEVs will also meet the overall phase-in requirement *if* a manufacturer has no Tier 1 vehicles or TLEVs. If a manufacturer does have some Tier 1 or TLEV engine families, it would have the choice of making some proportion of those vehicles SFTP-compliant or expending some effort phasing in additional LEV or ULEV engine families in order to maintain compliance with the phase-in requirements.

To provide some additional flexibility, CARB proposed a concept of equivalent phase-in schedules, which would be allowed in place of the required phase-in schedule. This approach allows manufacturers to use an alternative phase-in schedule providing that the alternative measures up to the required schedule according to a set methodology. The equivalent phase-in methodology calculates credits by weighting the required phase-in percentages in each model year of the phase-in schedule by the number of model years prior to and including the last model year of the scheduled phase-in, then summing these credits over the phase-in period. These ''credits'' are calculated for the required phase-in schedule, and any alternative phase-in that results in an equal or larger cumulative total number of credits by the end of the last model year of the scheduled phase-in is acceptable. For example, in the case of the CARB proposed phase-in, the required ''credits'' are: (25% * 4 years)+(50% * 3 years)+(85% * 2 years)+(100% * 1 year)=520. This allows manufacturers some additional flexibility while ensuring no loss in overall emissions over the phase-in schedule. Additionally, using this methodology, manufacturers can gain credits towards their phase-in through early introductions of vehicles meeting the applicable requirement even prior to the beginning of the required phase-in (e.g., 10 percent compliance five years before full phase-in gains 50 ''points'' towards the total required). Regardless of the number of ''points'' earned by a given alternative schedule, phase-in of 100% must be achieved in the required final

year of the phase-in. EPA proposes to adopt this proposal, with the additions noted below.

It is not entirely clear from the CARB Staff Report what enforcement mechanism will apply to the proposed allowance for an alternative phase-in. However, EPA believes that allowing the alternative phase-in approach requires that it be accompanied by an appropriate enforcement mechanism. Although it is possible that a manufacturer could reach the next-to-last year of the phase-in and realize that there is no way to achieve the desired credits, EPA believes that manufacturers would not plan this phase-in on a year-by-year basis, but rather would determine a specific schedule prior to implementation that integrates the phase-in with the product planning cycle and that would enable manufacturers to achieve the required points with an adequate margin of safety. In the event that a manufacturer does not attain the required number of phase-in credits, EPA proposes that enforcement will be much like the current enforcement provisions regarding non-compliance with a phase-in schedule. Specifically, failure to attain the required credits will be regarded as a failure to satisfy the conditions on which the certificate was issued. Vehicles sold in violation of that condition will not be covered by the certificate and hence will be subject to the currently available penalties. Today's notice proposes appropriate revisions to 40 CFR 86.096–30 to address this enforcement issue.

Although EPA is proposing in today's notice largely to adopt these phase-in elements of CARB SFTP and apply them on a national basis to the National LEV program, doing so raises several issues that EPA must consider. Perhaps most important is the implication that the structure of the phase-in as proposed by CARB allows Tier 1 vehicles to delay meeting SFTP standards beyond when they would have to meet SFTP standards under the currently applicable federal program. A couple of mitigating factors suggest that harmonizing with CARB in this regard is on balance a desirable policy. First, because of the requirement in the National LEV Program that Tier 1 vehicles and TLEVs can not be sold in the OTR after MY2000 unless those same engine families are certified as Tier 1 vehicles and TLEVs in California, it will be the California NMOG fleet average that will be driving the number of Tier 1 vehicles and TLEVs in the OTR (and in the rest of the country, for all practical purposes). It is EPA's expectation that Tier 1 vehicles in particular are unlikely to exist beyond the 2002 or 2003 model year, and if they exist in those years they will be a very small fraction of the new vehicle fleet. The environmental impact of not certifying this very small number of vehicles to SFTP standards should be negligible. Second, while the structure of the CARB phase-in requirements allows manufacturers to put off demonstrating compliance of Tier 1 vehicles with SFTP standards, potentially until such vehicles are no longer produced, for those years where a manufacturer continues to sell such vehicles they must phase some of them into SFTP standards or phase in additional LEVs or ULEVs to meet the overall fleet phase-in requirements. Given the overall benefits of achieving a fleet of LEVs and ULEVs that meet an appropriate SFTP standard, EPA believes that it is appropriate to harmonize the NLEV SFTP phase-in with the phase-in schedule as proposed by CARB.

4. Implementation Compliance

EPA must determine manufacturer compliance with the SFTP phase-in levels under the National LEV program. EPA is proposing to give the manufacturers the option of combining their entire fleet of light-duty vehicles and light light-duty trucks and such that this combined fleet meets the applicable phase-in requirements. EPA is also proposing to have manufacturers demonstrate compliance with the phase-in requirements based on vehicles sold outside of California, but is taking comment on having compliance determinations based on vehicles sold only in California or in all states.

EPA believes that combining light-duty vehicles and light light-duty trucks into one fleet and then determining SFTP phase-in requirements based on the combined fleet makes sense by giving manufacturers some additional flexibility in meeting the requirements without having detrimental environmental impacts. Manufacturers will have the ability to determine which light-duty vehicles and light light-duty trucks to include in their SFTP fleet for a particular model year instead of meeting specified phase-in levels for each vehicle class. For example, in MY2002, assuming equal numbers of light-duty vehicles and light light-duty trucks are produced, a manufacturer could certify 45% of its light-duty vehicle fleet and 55% of its light light-duty truck fleet to SFTP standards as long as 50% of its overall fleet met the SFTP standards, provided that all other provisions of the phase-in requirements were met. EPA does not believe that this proposal would have detrimental environmental effects because EPA does not expect actual SFTP phase-ins between vehicle classes to differ significantly. This proposal is consistent with CARB's requirements as well as the Federal Tier 1 SFTP regulations.

EPA has concerns about the manufacturers' proposal to show compliance with National LEV SFTP requirements based on a manufacturer's California fleet mix as opposed to its National LEV fleet mix. While EPA anticipates that vehicle product offering between California and the rest of the country will be similar, it is not certain that sales of such vehicles will be proportionately equivalent between the two regions. As California accounts for roughly only 10 percent of U.S. sales, EPA is concerned about having this small fraction dictate phase-in for 90% of the fleet. For example, harsher weather patterns elsewhere could cause sales of convertible vehicles in California to make up a greater percentage of a manufacturer's California fleet than of the manufacturer's federal fleet, while sales of four-wheel drive vehicles could be a greater percentage of the federal fleet. Sales mix differences between the California and Federal fleet can also differ between manufacturers. Thus, EPA is hesitant at this time to tie compliance with the National LEV SFTP standards solely to the vehicle mix offered in California. EPA does not believe that requiring compliance based on Federal, as opposed to California sales, is an undue burden on manufacturers. EPA has used a similar approach in other programs, such as the Tier 1 standards, on the understanding that providing a phase-in to manufacturers provides them with sufficient flexibility and burden reduction.

EPA is taking comment, however, on the manufacturers' proposal to base National LEV SFTP compliance on their vehicle sales mixes in California. Another option is to have EPA use the California vehicle sales mix, but include a maximum percentage by which a manufacturer's California SFTP fleet and its National LEV SFTP fleet may vary. A variance of five percentage points would still allow manufacturers to make their compliance determinations based on their California vehicle sales mix, but it would also ensure that the National LEV SFTP fleet will be substantially similar to the California fleet. This would mean that a manufacturer would certify 25% of its California fleet to SFTP standards in MY2002 and would be in compliance with National LEV SFTP requirements

as long as its Federal sales of SFTP-certified vehicles were at least 20% of the 49-state sales total.

EPA is also taking comment on a second alternative which would combine sales of California, any state with a Section 177 program, and Federal vehicles for the purpose of calculating fleet percentages in determining phase-in compliance. Compliance would be determined by analyzing a manufacturer's entire fleet of vehicles sold in the United States for compliance with the applicable SFTP phase-in requirements. A manufacturer choosing to overcomply in California would be able to have its Federal SFTP fleet levels somewhat below the applicable phase-in percentages, but the nationwide averaging requirement would ensure that the difference between California and Federal SFTP fleets would be minimal. This alternative would also give manufacturers credit for the California fleet sales and ensure that they meet the phase-in targets, while properly accounting for the bulk of sales which are in the other 49 states. In addition, this approach is consistent with the original Tier 1 final rule in which EPA elected to allow manufacturers to include California sales and sales to section 177 states in the phase-in compliance calculation. See 56 FR 25724 (June 5, 1991).

## X. Administrative Requirements

### *A. Administrative Designation*

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a ''significant regulatory action''. The Final Framework Rule was determined to be a ''significant regulatory action'' because it had an annual effect on the economy of more than $100 million. 62 FR 31231. The regulations being proposed in this rule will not have an economic impact greater than $100 million. EPA has submitted this rule to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record. EPA prepared a Regulatory Impact Analysis (RIA) for the Final Framework Rule (docket A–95–26, V–A–02). EPA indicated that the RIA will need to be modified to reflect the later start date proposed today and any new cost information. EPA will issue a final RIA at the time the supplemental final rule is issued.

### *B. Regulatory Flexibility*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities. Only manufacturers of motor vehicles, a group which does not contain a substantial number of small entities, will have to comply with the requirements of this rule. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

### *C. Unfunded Mandates Reform Act*

Under sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA), EPA generally must prepare a written statement to accompany any proposed or final rule that includes a federal mandate that may result in expenditures by state, local, or tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year.

EPA has determined that the written statement requirements of sections 202 and 205 of UMRA do not apply to today's rule, and thus do not require EPA to conduct further analyses pursuant to those requirements. National LEV is not a federal mandate because it does not impose any enforceable duties and because it is a voluntary program. Because National LEV would not impose a federal mandate on any party, section 202 does not apply to this rule. Even if these unfunded mandates provisions did apply to this rule, they are met by the Regulatory Impact Analysis prepared pursuant to Executive Order 12866 and contained in the docket.

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 not prepared such a plan because small governments would not be significantly or uniquely impacted by the rule.

Under section 204, an agency must develop an effective process for state, local, and tribal officials to provide meaningful input in the development of regulatory proposals that contain significant intergovernmental mandates. Section 204 does not apply because this rule would not impose any mandates. Throughout the National LEV process, however, EPA has provided numerous opportunities for states to provide meaningful input.

### *D. Reporting and Recordkeeping Requirements*

Today's rule does not impose any additional reporting or recordkeeping burdens on an affected party. The Information Collection Request (ICR) for the National LEV program was developed as part of the Final Framework Rule and has already been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An ICR document has been prepared by EPA (ICR No. 1761.02) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, EPA, 401 M St., SW (Mail Code 2137), Washington, DC 20460 or by calling (202) 260–2740. The information requirements are not effective until OMB approves them.

## XI. Statutory Authority

The promulgation of these regulations is authorized by sections 177, 202, 203, 204, 205, 206, 207, 208 and 301 of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (CAAA) (42 U.S.C. 7507, 7521, 7522, 7523, 7524, 7525, 7541, 7542, and 7601).

## List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Confidential Business Information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: August 4, 1997.

**Carol M. Browner,**

*Administrator.*

For the reasons set out in the preamble, chapter I, title 40 of the Code

of Federal Regulations is proposed to be amended as follows:

## PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671(q).

## Subpart A—[Amended]

2. Section 86.096–30 is amended by adding paragraph (a)(23) to read as follows:

### § 86.096–30 Certification.

* * * * *

(a) * * *

(23) For all light-duty vehicles and light light-duty trucks certified to standards under §§ 86.1710 through 86.1712, the provisions of paragraphs (a)(23)(i) through (iv) of this section apply.

(i) All certificates issued are conditional upon manufacturer compliance with all provisions of §§ 86.1709 through 86.1709 both during and after model year production.

(ii) Failure to meet the required implementation schedule sales percentages of the Alternative Phase-In schedule requirements (if chosen), in § 86.1708(a)(1)(i) for light-duty vehicles or § 86.1708(a)(1)(i) for light light-duty trucks, will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the individual vehicles sold in violation of the implementation schedule shall not be covered by the certificate.

(iii) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied.

(iv) For recall and warranty purposes, vehicles not covered by a certificate because of a violation of this condition of the certificate will continue to be held to the standards stated in the certificate that would have otherwise applied to the vehicles.

* * * * *

## Subpart R—[Amended]

3. Section 86.1702–97 is redesignated as § 86.1702–99 and amended in paragraph (b) by revising the definitions for ''Northeast Trading Region'' and ''Point of first sale'' and by adding new definitions in alphabetical order for ''All States Trading Region,'' ''Covered State,'' ''Existing ZEV Mandate,'' ''Ozone Transport Commission States,'' ''Section 177 Program,'' and ''ZEV Mandate,'' to read as follows:

### § 86.1702–99 Definitions.

* * * * *

(b) * * *

* * * * *

*All States Trading Region (ASTR)* means the region comprised of all states except the OTC States that have not opted into National LEV pursuant to the opt-in provisions at § 86.1705 or that have opted out of National LEV and whose opt outs have become effective, as provided at § 86.1707; and California; and any state outside the OTR with a Section 177 Program in effect that does not allow National LEV as a compliance alternative.

* * * * *

*Covered State* means an OTC State that has opted into National LEV and meets the conditions specified under § 86.1705(d).

* * * * *

*Existing ZEV Mandate* means any OTC State regulation or other law that imposes (or purports to impose) obligations on auto manufacturers to produce or sell a certain number or percentage of ZEVs and that was adopted prior to the date that the state submitted a National LEV opt-in notification to EPA.

* * * * *

*Northeast Trading Region (NTR)* means the region comprised of the OTC States that have opted into National LEV pursuant to the opt-in provisions at § 86.1705(e) and have not opted out of National LEV pursuant to the opt-out provisions at § 86.1707 or whose opt outs have not yet become effective, as provided at § 86.1707.

* * * * *

*Ozone Transport Commission States or OTC States* means the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and Virginia, and the District of Columbia.

* * * * *

*Point of first sale* is the location where the completed LDV or LDT is purchased, also known as the final product purchase location. The point of first sale may be a retail customer, dealer, distributor, fleet operator, broker, secondary manufacturer, or any other entity which comprises the point of first sale. In cases where the end user purchases the completed vehicle directly from the manufacturer, the end user is the point of first sale.

* * * * *

*Section 177 Program* means state regulations or other laws, except ZEV Mandates, which apply to any of the following categories of motor vehicles: Passenger cars, light duty trucks up through 6,000 pounds GVWR, and medium duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, Section 1900.

* * * * *

*ZEV Mandate* means any state regulation or other law that imposes (or purports to impose) obligations on auto manufacturers to produce, deliver for sale, or sell a certain number or percentage of ZEVs.

4. Section 86.1705–97 is redesignated as § 86.1705–99 and amended by revising the heading of the section, by adding a heading to paragraph (a), and by revising paragraphs (a) introductory text, (a)(2), (a)(3), and (b) through (g), to read as follows:

### § 86.1705–99 General provisions; opt-in.

(a) Covered manufacturers. Covered manufacturers must comply with the provisions in this subpart, and in addition, must comply with the requirements of 40 CFR parts 85 and 86. A manufacturer shall be a covered manufacturer if:

* * * * *

(2) Where a manufacturer has included a condition on opt-in provided for in paragraph (c)(2) of this section, that condition has been satisfied; and

(3) The manufacturer has not opted out, pursuant to § 86.1707, or the manufacturer has opted out but that opt-out has not become effective under § 86.1707.

(b) Covered manufacturers must comply with the standards and requirements specified in this subpart beginning in model year 1999. A manufacturer not listed in § 86.1706(b) that opts into the program after EPA issues a finding pursuant to § 86.1706(a) that the program is in effect must comply with the standards and requirements of this subpart beginning in the model year that includes January 1 of the calendar year after the calendar year in which that manufacturer opts in. Light-duty vehicles and light light-duty trucks sold by covered manufacturers must comply with the provisions of this subpart.

(c) Manufacturer opt-ins. (1) To opt into the National LEV program, a motor vehicle manufacturer must submit a written opt-in notification to the Administrator signed by a person or

entity within the corporation or business with authority to bind the corporation or business to its election and holding the position of vice president for environmental affairs or a position of comparable or greater authority. The notification must unambiguously and unconditionally (apart from the permissible conditions specified in paragraph (c)(2) of this section) indicate the manufacturer's agreement to opt into the program and be subject to the provisions in this subpart, and include the following language:

XX COMPANY, its subsidiaries, successors and assigns hereby opts into the voluntary National LEV program, as defined in 40 CFR part 86, subpart R, and agrees to be legally bound by all of the standards, requirements and other provisions of the National LEV program. XX COMPANY commits not to challenge EPA's authority to establish or enforce the National LEV program, and commits not to seek to certify any vehicle except in compliance with the regulations in subpart R.

(2) The opt-in notification may indicate that the manufacturer opts into the program subject to either or both of the following conditions:

(i) That the Administrator finds under § 86.1706 that the National LEV program is in effect, to be indicated with the following language:

This opt-in is subject to the condition that the Administrator make a finding pursuant to 40 CFR 86.1706 that the National LEV program is in effect.

(ii) That certain states (limited to the OTC States) opt into National LEV pursuant to § 86.1705, to be indicated with the following language:

This opt-in is subject to the condition that each of the states of [list state names] opt into National LEV pursuant to 40 CFR 86.1705.

(3) A manufacturer shall be considered to have opted in upon the Administrator's receipt of the opt-in notification and satisfaction of the conditions set forth in paragraph (c)(2) of this section, if applicable.

(d) Covered states. An OTC State shall be a covered state if:

(1) The state has opted into National LEV pursuant to paragraph (e) of this section;

(2) Where a state has included a condition on opt-in provided for in paragraph (e)(3)(viii) of this section, that condition has been satisfied; and

(3) The state has not opted out, pursuant to § 86.1707, or the state has opted out but that opt-out has not become effective under § 86.1707.

(e) OTC State opt-ins. To opt into the National LEV program, a state must submit the following as an opt-in notification to EPA:

(1)(i) An Executive Order signed by the governor of the state (or the mayor of the District of Columbia) that unambiguously and unconditionally (apart from the permissible conditions set forth in this section) indicates the state's agreement to opt into the National LEV program and includes the following language (language in brackets indicates that either formulation is acceptable):

This instrument [commits STATE to / opts STATE into] the National Low Emission Vehicle (National LEV) program, in accordance with the EPA National LEV program regulations at 40 CFR part 86, subpart R.

I hereby direct HEAD OF APPROPRIATE STATE AGENCY to forward to EPA with my concurrence the [enclosed letter signed / enclosed letter and proposed regulations signed and proposed] by the HEAD OF APPROPRIATE STATE AGENCY, which [specifies /specify] the details of STATE's commitment to the National LEV program.

I hereby direct APPROPRIATE STATE AGENCY to follow the procedures prescribed by the general statutes of STATE to take the necessary steps to adopt regulations and submit a state implementation plan revision committing STATE to National LEV in accordance with the EPA National LEV program regulations on SIP revisions at 40 CFR part 86, subpart R, and with section 110 of the Clean Air Act and its implementing regulations at 40 CFR parts 51 and 52.

(ii) States with Existing ZEV Mandates may add language to the Executive Order submitted pursuant to paragraph (e)(1) of this section confirming that this opt-in will not affect the state's requirements pertaining to ZEVs.

(2) If a state does not submit an Executive Order pursuant to paragraph (e)(1) of this section, a letter signed by the governor of the state (or the mayor of the District of Columbia) that unambiguously and unconditionally (apart from the permissible conditions set forth in this section) indicates the state's agreement to opt into the National LEV program and includes the following language (language in brackets indicates that either formulation is acceptable):

(i) ''This submittal is made in accordance with the EPA National Low Emission Vehicle (National LEV) regulations at 40 CFR part 86, subpart R to [commit STATE to / opt STATE into] the National LEV program.''

(ii)(A) ''I am forwarding to EPA the [enclosed letter which I signed / enclosed letter and proposed regulations which were signed and proposed] by HEAD OF APPROPRIATE STATE AGENCY at my direction, and which [specifies / specify] the details of STATE's commitment to the National LEV program.'' or;

(B) ''I am forwarding to EPA and concur with the [enclosed letter signed / enclosed letter and proposed regulations signed and proposed] by HEAD OF APPROPRIATE STATE AGENCY, which [specifies / specify] the details of STATE's commitment to the National LEV program.''

(iii) ''I [hereby direct / have directed] APPROPRIATE STATE AGENCY to follow the procedures prescribed by the general statutes of STATE to take the necessary steps to adopt regulations and submit a state implementation plan revision committing STATE to National LEV in accordance with the EPA National LEV regulations on SIP revisions at 40 CFR part 86, subpart R, and with section 110 of the Clean Air Act and its implementing regulations at 40 CFR parts 51 and 52.''

(iv) States with Existing ZEV Mandates may add language to the letter submitted pursuant to section (e)(2) of this section confirming that this opt-in will not affect the state's requirements pertaining to ZEVs.

(3) A letter signed by the head of the appropriate state agency that would unconditionally (except as set forth in this section) include the following:

(i) States without any Section 177 Program or with a Section 177 Program but not an Existing ZEV Mandate shall include the following language:

National LEV is designed as a compliance alternative for OTC State programs adopted pursuant to section 177 of the Clean Air Act that apply to passenger cars, light duty trucks up through 6,000 pounds GVWR, and/or medium duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, Section 1900. For the duration of STATE's participation in National LEV, [STATE will allow manufacturers to / manufacturers may] comply with National LEV in lieu of compliance with any program adopted by STATE pursuant to the authority provided in section 177 of the Clean Air Act applicable to the vehicle classes specified above, including any ZEV mandates. STATE's participation in National LEV extends until model year 2006, except as provided in 40 CFR 86.1707.

For the duration of STATE's participation in National LEV, STATE [intends to / will] forbear from adopting and implementing a ZEV mandate effective before model year 2006.

(ii) States with a Section 177 Program and an Existing ZEV Mandate, shall include the following language:

National LEV is designed as a compliance alternative for OTC State programs adopted pursuant to section 177 of the Clean Air Act that apply to passenger cars, light duty trucks up through 6,000 pounds GVWR, and medium duty vehicles from 6,001 to 14,000

pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, Section 1900. With the exception of any requirements pertaining to ZEVs, for the duration of STATE's participation in National LEV, [ STATE will allow manufacturers to / manufacturers may] comply with National LEV or equally stringent mandatory federal standards in lieu of compliance with any program adopted by STATE pursuant to the authority provided in section 177 of the Clean Air Act applicable to the vehicle classes specified above. STATE's participation in National LEV extends until model year 2006, except as provided in 40 CFR 86.1707. Any existing or future requirement pertaining to ZEVs is not affected by STATE's acceptance of National LEV as a compliance alternative for other state requirements.

(iii) All states shall include the following language:

Based on EPA's determination in the preamble to the final supplemental National LEV rule [CITE], STATE believes that National LEV will achieve reductions of VOC and $NO_x$ emissions that are equivalent to or greater than the reductions that would be achieved through OTC State adoption of California Low Emission Vehicle programs in the Ozone Transport Region.

(iv) All states shall include the following language:

STATE intends National LEV to be STATE's new motor vehicle emissions control program.

(v) All states shall include the following language:

STATE recognizes that motor vehicle manufacturers are committing to National LEV with the expectation that, through model year 2006, OTC States will allow National LEV as a compliance alternative for state Section 177 Programs applying to the vehicle classes specified above (except any requirements pertaining to ZEVs in states with Existing ZEV Mandates). It is our intent to abide by this commitment. However, the provisions of this letter will not have the force of law until STATE adopts them as state regulations. Adoption of state regulations and the contents of a final SIP revision will be determined through a state rulemaking process pursuant to the state requirements at [CITE to STATE law] and federal law. Also, STATE must comply with any subsequent STATE legislation that might affect this commitment.

(vi) All states shall include the following language:

If the manufacturers exit the National LEV program pursuant to the EPA National LEV regulations at 40 CFR 86.1707, STATE acknowledges that the transition from National LEV requirements to any STATE Section 177 Program applying to the vehicle classes specified above, including any requirements pertaining to ZEVs (except any requirements pertaining to ZEVs in states with Existing ZEV Mandates), will proceed in accordance with the EPA National LEV regulations at 40 CFR 86.1707.

(vii) All states shall include the following language:

STATE supports the legitimacy of the National LEV program and EPA's authority to promulgate the National LEV regulations.

(viii) Any state may include the following language:

This [commitment/opt-in] is conditioned on all motor vehicle manufacturers (listed in EPA regulations at 40 CFR 86.1706(b)) opting into National LEV and on EPA finding that National LEV is in effect pursuant to 40 CFR 86.1706.

(4) In lieu of statements described in paragraphs (e)(3)(i), (e)(3)(ii) and (e)(3)(vi) of this section, states may submit proposed regulations containing the provisions required under paragraphs (g)(1), (g)(2), (g)(3), and (g)(5) of this section.

(f) A state shall be considered to have opted in upon the Administrator's receipt of the opt-in notification and satisfaction of the conditions set forth in paragraph (e)(3)(viii) of this section, if applicable.

(g) Each OTC State that opts into National LEV pursuant to paragraph (e) of this section shall submit a SIP revision within one year of the date that EPA finds National LEV is in effect (pursuant to § 86.1706(a)), except for the District of Columbia, New Hampshire, Delaware, and Virginia, for which the deadline is 18 months from the date of such finding. The SIP revisions shall include the following:

(1) Covered States without any Section 177 Program, or with a Section 177 Program but not an Existing ZEV Mandate, shall submit regulations containing the following language:

For the duration of STATE's participation in National LEV, manufacturers may comply with National LEV or equally stringent mandatory federal standards in lieu of compliance with any program, including any mandates for sales of zero emission vehicles (ZEVs), adopted by STATE pursuant to the authority provided in section 177 of the Clean Air Act applicable to passenger cars , light duty trucks up through 6,000 pounds GVWR, and/or medium duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, Section 1900.

STATE's participation in National LEV extends until model year 2006, except as provided in 40 CFR 86.1707.

(2) Covered States with a Section 177 Program and an Existing ZEV Mandate shall submit regulations containing the following language:

With the exception of any STATE requirements pertaining to zero emission vehicles (ZEVs), for the duration of STATE's participation in National LEV, manufacturers may comply with National LEV or equally stringent mandatory federal standards in lieu of compliance with any program adopted by STATE pursuant to the authority provided in section 177 of the Clean Air Act applicable to passenger cars, light duty trucks up through 6,000 pounds GVWR, and/or medium duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, Section 1900.

STATE's participation in National LEV extends until model year 2006, except as provided in 40 CFR 86.1707.

Any existing or future STATE requirement pertaining to ZEVs is not affected by STATE's acceptance of National LEV as a compliance alternative for other state requirements.

(3) All covered states shall submit regulations containing the following language:

If a covered manufacturer, as defined at 40 CFR 86.1702, opts out of the National LEV program pursuant to the EPA National LEV regulations at 40 CFR 86.1707, the transition from National LEV requirements to any STATE section 177 program applicable to passenger cars, light duty trucks up through 6,000 pounds GVWR, and/or medium duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, Section 1900, will proceed in accordance with the EPA National LEV regulations at 40 CFR 86.1707.

(4) All covered states shall accompany the regulatory language with the following language:

STATE commits to support National LEV as an acceptable alternative to state CAL LEV programs.

STATE recognizes that its commitment to National LEV is necessary to ensure that National LEV remain in effect.

STATE is submitting this SIP revision in accordance with the applicable Clean Air Act requirements at section 110 and EPA regulations at 40 CFR Part 86 and 40 CFR Parts 51 and 52.

(5) States without Existing ZEV Mandates shall accompany the regulatory language with the following language:

For the duration of STATE's participation in National LEV, STATE [intends to / will] forbear from adopting and implementing a ZEV mandate effective prior to model year 2006.

5. Section 86.1706–97 is revised to read as follows:

**§ 86.1706–97 National LEV program in effect.**

(a) No later than [date of first business day 75 days after date of signature of

final rule] EPA shall issue a finding as to whether National LEV is in effect. EPA shall base this finding on opt-in notifications from OTC States submitted pursuant to § 86.1705(e) and received by EPA [date 45 days after date of signature of final rule], and on opt-in notifications from manufacturers submitted pursuant to § 86.1705(c) and received by EPA [date 60 days after date of signature of final rule].

(b) EPA shall find that the NLEV program is in effect and shall subsequently publish this determination if the following conditions have been met:

(1) All manufacturers listed in paragraph (c) of this section have lawfully opted in pursuant to § 86.1705(c) and any conditions placed on the opt-ins allowed under § 86.1705(c)(2) have been met (apart from a condition that EPA find the National LEV program in effect);

(2) All OTC States have lawfully opted in pursuant to § 86.1705(e) and any conditions placed on the opt-ins allowed under § 86.1705(e)(3)(viii) have been met (apart from a condition that EPA find the National LEV program in effect); and

(3) No valid opt out has become effective pursuant to § 86.1707.

(c) List of manufacturers of light-duty vehicles and light-duty trucks:

American Suzuki Motor Corporation
BMW of North America, Inc.
Chrysler Corporation
Fiat Auto U.S.A., Inc.
Ford Motor Company
General Motors Corporation
Hyundai Motor America
Isuzu Motors America, Inc.
Jaguar Motors Ltd.
Kia Motors America, Inc.
Land Rover North America, Inc.
Mazda (North America) Inc.
Mercedes-Benz of North America
Mitsubishi Motor Sales of America, Inc.
Nissan North America, Inc.
Porsche Cars of North America, Inc.
Rolls-Royce Motor Cars Inc.
Saab Cars USA, Inc.
Subaru of America, Inc.
Toyota Motor Sales, U.S.A., Inc.
Volkswagen of America, Inc.
Volvo North America Corporation

6. Section 86.1707–99 is added to subpart R to read as follows:

**§ 86.1707–99 General provisions; opt-outs.**

A covered manufacturer or covered state may opt out of the National LEV program only according to the provisions of this section. Vehicles certified under the National LEV program must continue to meet the standards to which they were certified, regardless of whether the manufacturer of those vehicles remains a covered manufacturer. A manufacturer that has opted out remains responsible for any debits outstanding on the effective date of opt-out, pursuant to § 86.1710(d)(3).

(a) *Procedures for opt-outs—manufacturers.* To opt out of the National LEV program, a covered manufacturer must notify the Administrator as provided in § 86.1705(c)(1), except that the notification shall specify the condition and final action allowing opt-out, indicate the manufacturer's intent to opt out of the program and no longer be subject to the provisions in this subpart, and specify an effective date for the opt-out. The effective date shall be specified in terms of the first model year for which the opt-out shall be effective, but shall be no earlier than the applicable date indicated in paragraphs (d) through (i) of this section. For an opt-out pursuant to paragraph (d) of this section, the manufacturer shall specify the revision triggering the opt-out and shall also provide evidence that the triggering revision does not harmonize the standard or requirement with a comparable California standard or requirement, if applicable, or that the triggering revision has increased the stringency of the revised standard or requirement, if applicable. The notification shall include the following language:

XX COMPANY, its subsidiaries, successors and assigns hereby opt out of the voluntary National LEV program, as defined in 40 CFR part 86, subpart R.

(b) *Procedures for opt-outs—OTC states.* To opt out of the National LEV program, a covered state must notify the Administrator through a written statement from the head of the appropriate state agency. The notification shall specify the final action allowing opt-out, indicate the state's intent to opt out of the program and no longer be subject to the provisions in this subpart, and specify an effective date for the opt-out. The effective date shall be specified in terms of the first model year for which the opt-out shall be effective, but shall be no earlier than the applicable date indicated in paragraphs (d) through (k) of this section. The notification shall include the following language:

STATE hereby opts out of the voluntary National LEV program, as defined in 40 CFR part 86, subpart R.

(c) *Procedures for opt-outs—EPA notification.* Upon receipt of an opt-out notification under this section, EPA shall promptly notify the covered states and covered manufacturers of the opt-out. Publication in the **Federal Register** of notice of receipt of the opt-out notification is sufficient but not necessary to meet EPA's obligation to notify covered states and covered manufacturers.

(d) *Conditions allowing manufacturer opt-outs—change to Stable Standards.* A covered manufacturer may opt out if EPA promulgates a final rule or other final agency action making a revision not specified in paragraph (d)(9)(iii) of this section to a standard or requirement listed in paragraph (d)(9)(i) of this section and the covered manufacturer objects to the revision.

(1) A covered manufacturer may opt out within 180 days of the EPA action allowing opt-out under this paragraph (d). A valid opt-out based on a revision to a Core Stable Standard may be effective no earlier than the model year named for the calendar year following the calendar year in which the manufacturer sends its opt-out notification to EPA. A valid opt-out based on a revision to a Non-Core Stable Standard may become effective no earlier than the first model year to which that revision applies.

(i) Only a covered manufacturer that objects to a revision may opt out if EPA adopts that revision, except that if such a manufacturer opts out, other manufacturers that did not object to the revision may also opt out pursuant to § 86.1707(i). An objection shall be sufficient for this purpose only if it was filed during the public comment period on the proposed revision and the objection states that the proposed revision is sufficiently significant to allow opt-out under § 86.1707(d).

(2) Within sixty days of receipt of an opt-out notification, EPA shall determine whether the opt-out is valid by determining whether the alleged condition allowing opt-out has occurred and whether the opt-out complies with the requirements under paragraphs (a) and (d) of this section. An EPA determination regarding the validity of an opt-out is not a rule, but is a nationally applicable final agency action subject to judicial review pursuant to section 307(b) of the Clean Air Act (42 U.S.C. 7607(b)).

(3) A manufacturer that has submitted an opt-out notification to EPA remains a covered manufacturer until EPA or a reviewing court determines that the opt-out is valid and the opt-out has come into effect under paragraph (d)(1) of this section.

(4) In the event that a manufacturer petitions for judicial review of an EPA determination that an opt-out is invalid, the manufacturer remains a covered manufacturer until final judicial resolution of the petition. Pending resolution of the petition, and after the

date that the opt-out would have come into effect under paragraph (d)(1) of this section if EPA had determined the opt-out was valid, the manufacturer may certify vehicles to any standards in this part applicable to vehicles certified in that model year and sell such vehicles without regard to the limitations contained in § 86.1711–99. However, if the opt-out is finally determined to be invalid, the manufacturer will be liable for any failure to comply with §§ 86.1710 through 86.1712, except for failure to comply with the limitations contained in § 86.1711(b).

(5) Upon the effective date of a manufacturer's opt-out based on this condition, that manufacturer shall be subject to all provisions that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*) and any state standards in effect pursuant to section 177 of the Clean Air Act (42 U.S.C. 7507). For any state Section 177 Program that has been in place at least two years as of the effective date of a manufacturer's opt-out, a manufacturer waives its right under section 177 of the Clean Air Act to two years of lead time to the extent that the effective date of its opt-out provides for less than two years of lead time and to the extent such a waiver is necessary. With respect to ZEV Mandates, the manufacturer will not be deemed to have waived its two-year lead time under section 177 of the Clean Air Act, and such lead time shall run from the date of EPA's receipt of the manufacturer's opt-out notice.

(6) If a covered manufacturer opts out based on this condition, any covered state that is not a violating state under paragraph (e), (f) or (g) of this section may opt out within 90 calendar days of the date of either an EPA finding that the opt-out is valid, or a judicial ruling that a disputed opt-out is valid. The state's opt-out notification shall specify an effective date for the state's opt-out that may not provide for less than the two-years lead-time required under section 177 of the Clean Air Act (running from the date of the EPA's receipt of the state's opt-out notification).

(7) In states that do not opt out, obligations under National LEV shall be unaffected for covered manufacturers.

(8) In a state that opts out pursuant to paragraph (d)(6) of this section, obligations under National LEV shall be unaffected for covered manufacturers until the effective date of the state's opt out. Upon the effective date of the state's opt out, in that state covered manufacturers shall comply with any state standards in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all provisions that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*).

(9)(i) The following are the emissions standards and requirements that, if revised, may provide covered manufacturers the opportunity to opt out pursuant to paragraph (d)(1) of this section:

(A) The tailpipe emissions standards for NMOG, $NO_X$, CO, HCHO, and PM specified in § 86.1708(b) and (c) and § 86.1709(b) and (c);

(B) Fleet average NMOG standards and averaging, banking and trading provisions specified in § 86.1710;

(C) Provisions regarding limitations on sale of Tier 1 vehicles and TLEVs contained in § 86.1711;

(D) The compliance test procedure (Federal Test Procedure) as specified in subparts A and B of this part, as used for determining compliance with the exhaust emission standards specified in § 86.1708(b) and (c) and § 86.1709(b) and (c);

(E) The compliance test fuel, as specified in § 86.1771;

(F) The definition of low volume manufacturer specified in § 86.1702;

(G) The on-board diagnostic system requirements specified in § 86.1717;

(H) The light-duty vehicle refueling emissions standards and provisions specified in § 86.099–8(d), and the light-duty truck refueling emissions standards and provisions specified in § 86.001–9(d);

(I) The cold temperature carbon monoxide standards and provisions for light-duty vehicles specified in § 86.099–8(k), and for light light-duty trucks specified in § 86.099–9(k);

(J) The evaporative emissions standards and provisions for light-duty vehicles specified in § 86.099–8(b), and the evaporative emissions standards and provisions for light light-duty trucks specified in § 86.099–9(b);

(K) The reactivity adjustment factors and procedures specified in § 86.1777(d);

(L) The Supplemental Federal Test Procedure, standards and phase-in schedules specified in § 86.000–8(e), § 86.000-9(e), § 86.127(f) and (g), § 86.129(e) and (f), § 86.130(e), § 86.131(f), § 86.132(n) and (o), § 86.158, § 86.159, § 86.160, § 86.161, § 86.162, § 86.163, § 86.164, and Appendix I to this part, paragraphs (g) and (h).

(ii) The standards and requirements listed in paragraphs (d)(9)(i)(A) through (d)(9)(i)(F) of this section are the ''Core Stable Standards''; the standards and requirements listed in paragraphs (d)(9)(i)(G) through (d)(9)(i)(L) of this section are the ''Non-Core Stable Standards.''

(iii) The following types of revisions to the Stable Standards listed in paragraph (d)(9)(i) of this section do not provide covered manufacturers the right to opt out of the National LEV program:

(A) Revisions to which covered manufacturers do not object;

(B) Revisions to a Non-Core Stable Standard that do not increase the overall stringency of the standard or requirement;

(C) Revisions to a Non-Core Stable Standard that harmonize the standard or requirement with the comparable California standard or requirement for the same model year (even if the harmonization increases the stringency of the standard or requirement), provided that EPA can only raise to 1.0 any of the reactivity adjustment factors specified in 86.1777 applicable to gasoline meeting the specifications of 86.1771(a)(1), even if the California factor is greater than 1.0;

(D) Revisions to a Non-Core Stable Standard that are effective after model year 2006;

(E) Revisions to cold temperature carbon monoxide standards and provisions for light-duty vehicles (as specified in § 86.099–8(k)) and for light light-duty trucks (as specified in § 86.099–9(k)) that are effective after model year 2000.

(10) Promulgation of mandatory standards and requirements that end the effectiveness of the National LEV program pursuant to § 86.1701(c) does not provide an opportunity to opt out of the National LEV program.

(e) *Conditions allowing manufacturer opt-outs—state Section 177 Program that does not allow National LEV as a compliance alternative.* A covered manufacturer may opt out of National LEV if a covered state takes final action such that it has in its regulations a state Section 177 Program and/or a ZEV Mandate (except in a state with an Existing ZEV Mandate at the time of its opt-in), that, prior to the 2006 model year, does not allow National LEV as a compliance alternative. A manufacturer could opt out based on this condition even if the state regulations are contrary to an approved SIP revision committing the state to National LEV pursuant to § 86.1705(g). For purposes of this paragraph (e), such a state shall be called the ''violating state''.

(1) A covered manufacturer may opt out any time after the violating state takes such final action, provided that the violating state has not withdrawn or otherwise nullified the relevant final action. An opt-out under this opt-out condition may be effective no earlier than the model year named for the calendar year following the calendar year in which the manufacturer sends its opt-out notification to EPA.

(2) As of the model year named for the calendar year following the violating state's final action, the violating state shall no longer be included in the applicable trading region for purposes of calculating covered manufacturers' compliance with the fleet average NMOG standards under § 86.1710. Beginning in that model year and until the violating state's regulations become effective pursuant to sections 110(l) and 177 of the Clean Air Act, the National LEV program allows covered manufacturers to certify and produce for sale vehicles meeting the exhaust emission standards of § 86.096–8(a)(1)(i) and subsequent model year provisions or § 86.097–9(a)(1)(i) and subsequent model year provisions in the violating state. The two-year lead time required by section 177 of the Clean Air Act for the state Section 177 Program or ZEV Mandate shall run from the date of the final state action. Notwithstanding an earlier effective date of a manufacturer's opt out based on this condition, the manufacturer's opt out is not effective in the violating state until the two-year lead time for the violating state's program has passed (which shall run from the date of the final violating state action).

(3) Upon the effective date of a manufacturer's opt-out based on this condition in any covered state that is not a violating state under this paragraph (e), that manufacturer shall be subject to all provisions that would apply to a manufacturer that had not opted into National LEV, including all applicable standards and requirements promulgated under title II of the Clean Air Act and any state standards in effect pursuant to section 177 of the Clean Air Act (42 U.S.C. 7507). For any state Section 177 Program that has been in place in a non-violating state at least two years as of the effective date of a manufacturer's opt-out, a manufacturer waives its right under section 177 of the Clean Air Act to two years of lead time to the extent that the effective date of its opt-out provides for less than two years of lead time and to the extent such a waiver is necessary. With respect to ZEV Mandates, the manufacturer will not be deemed to have waived its two-year lead time under section 177 of the Clean Air Act, which shall run from the date of EPA's receipt of the manufacturer's opt-out notice.

(4) If a covered manufacturer opts out based on this opt-out condition, any covered state that is not a violating state under paragraph (e), (f) or (g) of this section may opt out within 90 calendar days of EPA's receipt of the manufacturer's opt-out notification. The state's opt-out notification shall specify an effective date for the state's opt-out that may not provide for less than the two-years lead-time required under section 177 of the Clean Air Act (running from the date of EPA's receipt of the state's opt-out notification).

(5) In non-violating states that have not opted out, obligations under National LEV shall be unaffected for covered manufacturers.

(6) In a non-violating state that opts out pursuant to paragraph (e)(4) of this section, obligations under National LEV shall be unaffected for covered manufacturers until the effective date of the non-violating state's opt-out. Upon the effective date of the state's opt-out, in that state covered manufacturers shall comply with any state standards in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all provisions that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*).

(f) *Conditions allowing manufacturer opt-outs—failure to submit SIP revision.* A covered manufacturer may opt out of National LEV if a covered state fails to submit a National LEV SIP revision on the date specified in § 86.1705(g). For purposes of this paragraph (f), such a state shall be called the ''violating state''.

(1) A covered manufacturer may opt out any time after the violating state misses the deadline for its National LEV SIP revision, provided that the violating state has not submitted a National LEV SIP revision prior to the manufacturer's submission of its opt-out notification. If a manufacturer opts out within 180 days from the deadline for the state to submit its National LEV SIP revision, the opt-out must be conditioned on the state not submitting a National LEV SIP revision within 180 days from the deadline for such SIP revision. If the state submits such a SIP revision within the 180-day period, any manufacturer opt-outs based on this opt-out condition would be invalidated and would not come into effect. An opt-out under this opt-out condition may be effective no earlier than the model year named for the calendar year following the calendar year in which the manufacturer sends its opt-out notification to EPA, or the date 180 days from the deadline for the state to submit its National LEV SIP revision, whichever is later.

(2) For a manufacturer that opts out based on this opt-out condition, as of model year 2000 (or model year 2001 if the violating state is the District of Columbia, New Hampshire, Delaware, or Virginia) or the model year named for the calendar year following EPA's receipt of the opt-out notification, whichever is later, the violating state shall no longer be included in the applicable trading region for purposes of calculating that manufacturer's compliance with the fleet average NMOG standards under § 86.1710. Beginning in that model year and until the manufacturer's opt-out becomes effective, the National LEV program allows a manufacturer that has opted out based on this condition to certify and produce for sale vehicles meeting the exhaust emission standards of § 86.096–8(a)(1)(i) and subsequent model year provisions or § 86.097–9(a)(1)(i) and subsequent model year provisions in the violating state. National LEV obligations in the violating state remain unchanged for those manufacturers that do not opt out based on this condition.

(3) Upon the effective date of a manufacturer's opt-out based on this opt-out condition, in any covered state that is not a violating state under this paragraph (f), that manufacturer shall be subject to all provisions that would apply to a manufacturer that had not opted into National LEV, including all applicable standards and requirements promulgated under title II of the Clean Air Act and any state standards in effect pursuant to section 177 of the Clean Air Act (42 U.S.C. 7507). For any state Section 177 Program that has been in place in a non-violating state at least two years as of the effective date of a manufacturer's opt-out, a manufacturer waives its right under section 177 of the Clean Air Act to two years of lead time to the extent that the effective date of its opt-out provides for less than two years of lead time and to the extent such a waiver is necessary. With respect to ZEV Mandates, the manufacturer will not be deemed to have waived its two-year lead time under section 177 of the Clean Air Act, which shall run from the date of EPA's receipt of the manufacturer's opt-out notice.

(4) If a covered manufacturer opts out based on this opt-out condition, any covered state that is not a violating state under paragraph (e), (f) or (g) of this section may opt out within 90 calendar

days of EPA's receipt of the manufacturer's opt-out notification. The state's opt-out notification shall specify an effective date for the state's opt-out that may not provide for less than the two-years lead-time required under section 177 of the Clean Air Act (running from the date of EPA's receipt of the state's opt-out notification).

(5) In non-violating states that have not opted out, obligations under National LEV shall be unaffected for covered manufacturers.

(6) In a non-violating state that opts out pursuant to paragraph (f)(4) of this section, obligations under National LEV shall be unaffected for covered manufacturers until the effective date of the non-violating state's opt-out. Upon the effective date of the state's opt-out, in that state covered manufacturers shall comply with any state standards in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all provisions that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*).

(g) *Conditions allowing manufacturer opt-outs—lack of an approvable SIP revision.* A covered manufacturer may opt out of National LEV if EPA disapproves a National LEV SIP revision submitted by a covered state pursuant to § 86.1705(g) and the State fails to correct the SIP revision. For purposes of this paragraph (g), such a state shall be called the ''violating state.''

(1) A covered manufacturer may opt out any time after EPA has disapproved a state's National LEV SIP revision provided that it is more than a year after EPA's disapproval and the state has not yet submitted a revised National LEV SIP. If the state has submitted a revised National LEV SIP revision, covered manufacturers may not opt out unless and until EPA disapproves the state's revised National LEV SIP revision. An opt-out under this condition may be effective no earlier than the model year named for the calendar year following the calendar year in which the EPA receives the manufacturer's opt-out notification.

(2) For a manufacturer that opts out based on this opt-out condition, as of the model year named for the calendar year following EPA's receipt of the opt-out notification, the violating state shall no longer be included in the applicable trading region for purposes of calculating that manufacturer's compliance with the fleet average NMOG standards under § 86.1710. Beginning in that model year and until the manufacturer's opt-out becomes effective, the National LEV program allows a manufacturer that has opted out based on this condition to certify and produce for sale vehicles meeting the exhaust emission standards of § 86.096–8(a)(1)(i) and subsequent model year provisions or § 86.097–9(a)(1)(i) and subsequent model year provisions in the violating state. National LEV obligations in the violating state remain unchanged for those manufacturers that do not opt out based on this condition.

(3) Upon the effective date of a manufacturer's opt-out based on this opt-out condition, in any covered state that is not a violating state under this paragraph (g), that manufacturer shall be subject to all provisions that would apply to a manufacturer that had not opted into National LEV, including all applicable standards and requirements promulgated under title II of the Clean Air Act and any state standards in effect pursuant to section 177 of the Clean Air Act (42 U.S.C. 7507). For any state Section 177 Program that has been in place at least two years as of the effective date of a manufacturer's opt-out, in a non-violating state a manufacturer waives its right under section 177 of the Clean Air Act to two years of lead time to the extent that the effective date of its opt-out provides for less than two years of lead time and to the extent such a waiver is necessary. With respect to ZEV Mandates, the manufacturer will not be deemed to have waived its two-year lead time under section 177 of the Clean Air Act, which shall run from the date of EPA's receipt of the manufacturer's opt-out notice.

(4) If a covered manufacturer opts out based on this opt-out condition, any covered state that is not a violating state under paragraph (e), (f) or (g) of this section may opt out within 90 calendar days of EPA's receipt of the manufacturer's opt-out notification. The state's opt-out notification shall specify an effective date for the state's opt-out that may not provide for less than the two-years lead-time required under section 177 of the Clean Air Act (running from the date of EPA's receipt of the state's opt-out notification).

(5) In non-violating states that have not opted out, obligations under National LEV shall be unaffected for covered manufacturers.

(6) In a non-violating state that opts out pursuant to paragraph (g)(4) of this section, obligations under National LEV shall be unaffected for covered manufacturers until the effective date of the non-violating state's opt-out. Upon the effective date of the state's opt-out, in that state covered manufacturers shall comply with any state standards in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all provisions that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*).

(h) *Conditions allowing manufacturer opt-outs—EPA failure to consider in-use fuel issues.* A covered manufacturer may opt out of National LEV if EPA does not meet its obligations related to fuel sulfur effects, as those obligations are set forth in paragraph (h)(7) of this section.

(1) A manufacturer may request in writing that EPA consider taking a specific action with regard to a fuel sulfur effect described in paragraph (h)(7) of this section. The request must identify the alleged fuel sulfur related problem, demonstrate that the problem exists and is caused by in-use fuel sulfur levels, and ask EPA to consider taking a specific action. Within 60 days of EPA's receipt of the manufacturer's request, EPA must respond to the manufacturer's request in writing, stating the Agency's decision and explaining the basis for the decision.

(2) If EPA fails to respond to a manufacturer's request within the time provided, the covered manufacturer that submitted the request may opt out within 180 days of the deadline for the EPA response (if such a manufacturer opts out, other manufacturers that did not submit requests may also opt out pursuant to § 86.1707(i). Once EPA responds to the request, even if after the expiration of the 60-day EPA deadline, a manufacturer that had not yet submitted an opt-out notification may no longer opt out based on this opt-out condition. An opt-out based on this condition may be effective no earlier than the model year named for the calendar year following the calendar year in which EPA received the manufacturer's opt-out notification.

(3) Upon the effective date of a manufacturer's opt-out based on this opt-out condition, that manufacturer shall be subject to all provisions that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*) and any state standards in effect pursuant to section 177 of the Clean Air Act (42 U.S.C. 7507). For any state Section 177 Program that has been in place at least two years as of the effective date of a manufacturer's opt-out, a manufacturer

waives its right under section 177 of the Clean Air Act to two years of lead time to the extent that the effective date of its opt-out provides for less than two years of lead time and to the extent such a waiver is necessary. With respect to ZEV Mandates, the manufacturer will not be deemed to have waived its two-year lead time under section 177 of the Clean Air Act, and such lead time shall run from the date of EPA's receipt of the manufacturer's opt-out notice.

(4) If a covered manufacturer opts out based on this condition, any covered state that is not a violating state under paragraph (e), (f) or (g) of this section may opt out within 90 calendar days of EPA's receipt of the manufacturer's opt-out notification. The state's opt-out notification shall specify an effective date for the state's opt-out that may not provide for less than the two-years lead-time required under section 177 of the Clean Air Act (running from the date of EPA's receipt of the state's opt-out notification).

(5) In states that do not opt out, obligations under National LEV shall not be affected for covered manufacturers.

(6) In a state that opts out pursuant to paragraph (h)(4) of this section, obligations under National LEV shall be unaffected for covered manufacturers until the effective date of the state's opt out. Upon the effective date of the state's opt out, in that state covered manufacturers shall comply with any state standards in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all provisions that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*).

(7) Following are EPA's obligations related to the potential effects of sulfur levels in in-use fuels. If EPA does not meet the obligations pursuant to paragraph (h)(1) of this section, it will provide covered manufacturers the opportunity to opt out pursuant to paragraph (h)(1) of this section:

(i) During the certification process and upon a manufacturer's request, EPA will consider allowing the use of an on-board diagnostic system (as required by § 86.1717), that functions properly on low sulfur gasoline, but indicates sulfur-induced passes when exposed to high sulfur gasoline.

(ii) Upon a manufacturer's request, if vehicles exhibit sulfur-induced MIL illuminations due to high sulfur gasoline, EPA will consider allowing modifications to such vehicles on a case-by-case basis so as to eliminate the sulfur-induced MIL.

(iii) Upon a manufacturer's request, prior to in-use testing, that presents information to EPA regarding pre-conditioning procedures designed solely to remove the effects of high sulfur from currently available gasoline, EPA will consider allowing such procedures on a case-by-case basis.

(i) *Conditions allowing manufacturer opt-outs—OTC state or manufacturer opts out.* A covered manufacturer may opt out of National LEV if a covered state or another covered manufacturer opts out of the National LEV program pursuant to this section.

(1) If a covered manufacturer's opt-out under § 86.1707(i) is based on a covered state or covered manufacturer's opt-out under paragraph (e), (g), (h), (i), (j) or (k) of this section, the manufacturer may opt out within 90 calendar days of EPA's receipt of the underlying state or manufacturer's opt-out notification. If a manufacturer's opt-out under § 86.1707(i) is based on a manufacturer's opt-out under paragraph (d) of this section, the manufacturer may opt out within 90 calendar days of the date of either an EPA finding or a judicial ruling that the opt-out under paragraph (d) of this section is valid. If a manufacturer's opt-out under § 86.1707(i) is based on a manufacturer's opt-out under paragraph (f) of this section, the manufacturer may opt out within 90 days of the expiration of the condition required by paragraph (f) of this section, or within 90 calendar days of EPA's receipt of the underlying state or manufacturer's opt-out notification, whichever is later. An opt-out under § 86.1707(i) may be effective no earlier than the model year named for the calendar year following the calendar year in which the manufacturer sends its opt-out notification to EPA.

(2) Upon the effective date of a manufacturer's opt-out based on this opt-out condition, in any covered state that manufacturer shall be subject to all provisions that would apply to a manufacturer that had not opted into National LEV, including all applicable standards and requirements promulgated under title II of the Clean Air Act and any state standards in effect pursuant to section 177 of the Clean Air Act (42 U.S.C. 7507). For any state Section 177 Program that has been in place at least two years as of the effective date of a manufacturer's opt-out, a manufacturer waives its right under section 177 of the Clean Air Act to two years of lead time to the extent that the effective date of its opt-out provides for less than two years of lead time and to the extent such a waiver is necessary. With respect to ZEV Mandates, the manufacturer will not be deemed to have waived its two-year lead time under section 177 of the Clean Air Act, which shall run from the date of EPA's receipt of the manufacturer's opt-out notice.

(3) If a covered manufacturer opts out based on this condition, any covered state that is not a violating state under paragraph (e), (f) or (g) of this section may opt out within 90 calendar days of EPA's receipt of the manufacturer's opt-out notification. The state's opt-out notification shall specify an effective date for the state's opt-out that may not provide for less than the two-years lead-time required under section 177 of the Clean Air Act (running from the date of EPA's receipt of the state's opt-out notification).

(4) In non-violating states that have not opted out, obligations under National LEV shall be unaffected for covered manufacturers.

(5) In a non-violating state that opts out pursuant to paragraph (i)(3) of this section, obligations under National LEV shall be unaffected for covered manufacturers until the effective date of the non-violating state's opt-out. Upon the effective date of the state's opt-out, in that state covered manufacturers shall comply with any state standards in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all provisions that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*).

(j) *Conditions allowing OTC state opt-outs—change to Stable Standards.* Any covered state may opt out of National LEV if EPA promulgates a final rule or other final agency action revising a standard or requirement listed in paragraph (d)(9)(i) of this section, and, had the revised standard or requirement been included at the time, it would have changed EPA's [date of signature of final rule] determination (''initial determination'') that National LEV would produce emissions reductions at least equivalent to the OTC State Section 177 Programs that would apply in the absence of National LEV.

(1) If EPA promulgates a final rule or other final agency action revising a standard or requirement listed in paragraph (d)(9)(i) of this section, a covered state may request in writing that EPA reevaluate, using the revised standard or requirement, its initial determination that National LEV would produce emissions reductions at least equivalent to the OTC State Section 177

Programs that would be operative in the absence of National LEV. Within 180 days of receipt of the state's request, EPA must take final agency action to determine whether the revision would have changed EPA's initial determination. These EPA determinations are not rules, but are nationally applicable final agency actions subject to judicial review pursuant to section 307(b) of the Clean Air Act (42 U.S.C. 7607(b)). In reevaluating its determination regarding the relative emission benefits of National LEV, EPA shall use the same Mobile emission factor model and the same inputs and assumptions as used in the initial determination, with the following exceptions:

(i) In modeling the emission reductions from National LEV, EPA must use the revised standard or requirement in place of the standard or requirement as it existed when EPA made its initial determination; and

(ii) In modeling the emissions reductions that would be achieved through the OTC State Section 177 Programs that would apply in the absence of National LEV, EPA shall take into account all Section 177 Programs adopted by OTC States (including programs that allow National LEV as a compliance alternative) that had been adopted subsequent to EPA's initial determination. In accounting for the emissions effect of OTC State Section 177 Programs, EPA shall continue to assume that all OTC State Section 177 Programs have the same substantive requirements used in EPA's initial determination and shall not model any effects of state regulation of medium-duty vehicles (as defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, Section 1900).

(2) A covered state may opt out of National LEV within 90 days of a final EPA determination pursuant to paragraph (j)(1) of this section that a revision to a standard or requirement listed in paragraph (d)(9)(i) of this section, if it had been included at the time, would have changed EPA's initial determination that National LEV would produce emissions reductions at least equivalent to the OTC State Section 177 Programs that would be operative in the absence of National LEV. The state's opt-out notification shall specify an effective date for the state's opt-out that may not provide for less than the two-years lead-time required under section 177 of the Clean Air Act (running from the date of EPA's receipt of the state's opt-out notification).

(3) If a covered state opts out based on this condition, a covered manufacturer may opt out of National LEV pursuant to § 86.1707(i).

(4) In a state that opts out pursuant to paragraph (j)(1) of this section, obligations under National LEV shall be unaffected for covered manufacturers until the effective date of that state's opt-out. Upon the effective date of the state's opt-out, in that state covered manufacturers shall comply with any state standards in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all provisions that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*).

7. Section 86.1708–97 is redesignated as § 86.1708–99 and amended by revising the section heading, by redesignating Tables R97–1 through R97–7 as Tables R99–1 through R99–7, by revising the references ''R97–1'', ''R97–2'', ''R97–3'', ''R97–4'', ''R97–5'', ''R97–6'', and ''R97–7'' to read ''R99–1'', ''R99–2'', ''R99–3'', ''R99–4'', ''R99–5'', ''R99–6'', and ''R99–7'', respectively, wherever they appear in the section, and by adding paragraph (e) to read as follows:

**§ 86.1708–99 Exhaust emission standards for 1999 and later light-duty vehicles.**

* * * * *

(e) *SFTP Standards.* Exhaust emission standards from 2001 and later model year light-duty vehicles shall meet the additional SFTP standards in this paragraph (e) according to the implementation schedules in this paragraph (e). The standards set forth in this paragraph (e) refer to exhaust emissions emitted over the Supplemental Federal Test Procedure (SFTP) as set forth in subpart B of this part and collected and calculated in accordance with those procedures.

(1) *Tier 1 vehicles and TLEVs.* The SFTP exhaust emission levels from new 2001 and subsequent model year light-duty vehicles certified to the exhaust emission standards in § 86.099–8(a)(1)(i) and subsequent model year provisions and light-duty vehicles certified as TLEVs shall not exceed the standards in Table R99–7.1, according to the implementation schedule in paragraph (e)(1)(i) of this section.

TABLE R99–7.1—SFTP EXHAUST EMISSION STANDARDS (G/MI) FOR TIER 1 VEHICLES AND TLEVS

| Useful life | Fuel type | NMHC + $NO_X$ composite | CO | | |
|---|---|---|---|---|---|
| | | | A/C test | US06 test | Composite option |
| Intermediate | Gasoline | 0.65 | 3.0 | 9.0 | 3.4 |
| | Diesel | 1.48 | NA | 9.0 | 3.4 |
| Full | Gasoline | 0.91 | 3.7 | 11.1 | 4.2 |
| | Diesel | 2.07 | NA | 11.1 | 4.2 |

(i) *Phase-in requirements.* For the purposes of this paragraph (e)(1) only, each manufacturer's light-duty vehicle and light light-duty truck fleet shall be defined as the total projected number of light-duty vehicles certified to the exhaust emission standards in § 86.099–8(a)(1)(i) and subsequent model year provisions and light light-duty trucks certified to the exhaust emission standards in § 86.099–9(a)(1)(i) and subsequent model year provisions and certified as TLEVs sold in the United States. As an option, a manufacturer may elect to have its total light-duty vehicle and light light-duty truck fleet defined, for the purposes of this paragraph (e)(1) only, as the total projected number of the manufacturer's light-duty vehicles and light light-duty trucks, other than zero emission vehicles, certified and sold in the United States.

(A) Manufacturers of light-duty vehicles and light light-duty trucks, except low volume manufacturers, shall certify a minimum percentage of their light-duty vehicle and light light-duty truck fleet according to the following phase-in schedule:

| Model year | Percentage |
|---|---|
| 2001 | 25 |
| 2002 | 50 |
| 2003 | 85 |

| Model year | Percentage |
|---|---|
| 2004 and subsequent ..... | 100 |

(B) Low volume manufacturers of light-duty vehicles and light light-duty trucks shall certify 100 percent of their light-duty vehicle and light light-duty truck fleet in the 2004 and subsequent model years.

(ii) [Reserved]

(2) *LEVs and ULEVs.* The SFTP standards in this paragraph (e)(2) represent the maximum SFTP exhaust emissions at 4,000 miles +/− 250 miles or at the mileage determined by the manufacturer for emission data vehicles in accordance with § 86.1726. The SFTP exhaust emission levels from new 2001 and subsequent model year light-duty vehicle LEVs and ULEVs shall not exceed the standards in the following table, according to the implementation schedule in paragraph (e)(2)(i) of this section:

TABLE R99–7.2.—SFTP EXHAUST EMISSION STANDARDS (G/MI) FOR LEVS AND ULEVS

| US06 test | A/C test | | |
|---|---|---|---|
| NMHC + $NO_x$ | CO | NMHC + $NO_x$ | CO |
| 0.14 | 8.0 | 0.20 | 2.7 |

(i) *Phase-in requirements.* For the purposes of this paragraph (e)(2) only, each manufacturer's light-duty vehicle and light light-duty truck fleet shall be defined as the total projected number of light-duty vehicles and light light-duty trucks certified as LEVs and ULEVs sold in the United States.

(A) Manufacturers of light-duty vehicles and light light-duty trucks, except low volume manufacturers, shall certify a minimum percentage of their light-duty vehicle and light light-duty truck fleet according to the following phase-in schedule:

| Model year | Percentage |
|---|---|
| 2001 ..... | 25 |
| 2002 ..... | 50 |
| 2003 ..... | 85 |
| 2004 and subsequent ..... | 100 |

(B) Manufacturers may use an ''Alternative or Equivalent Phase-in Schedule'' to comply with the phase-in requirements. An ''Alternative Phase-in'' is one that achieves at least equivalent emission reductions by the end of the last model year of the scheduled phase-in. Model-year emission reductions shall be calculated by multiplying the percent of vehicles (based on the manufacturer's projected California sales volume of the applicable vehicle fleet) meeting the new requirements per model year by the number of model years implemented prior to and including the last model year of the scheduled phase-in. The ''cumulative total'' is the summation of the model-year emission reductions (e.g., a four model-year 25/50/85/100 percent phase-in schedule would be calculated as: (25%*4 years) + (50%*3 years) + (85%*2 years) + (100%*1 year) = 520). Any alternative phase-in that results in an equal or larger cumulative total than the required cumulative total by the end of the last model year of the scheduled phase-in shall be considered acceptable by the Administrator under the following conditions: All vehicles subject to the phase-in shall comply with the respective requirements in the last model year of the required phase-in schedule; and if a manufacturer uses the optional phase-in percentage determination in paragraph (e)(1)(i) of this section, the cumulative total of model-year emission reductions as determined only for light-duty vehicles and light light-duty trucks certified to this paragraph (e)(2) must also be equal to or larger than the required cumulative total by end of the 2004 model year. Manufacturers shall be allowed to include vehicles introduced before the first model year of the scheduled phase-in (e.g., in the previous example, 10 percent introduced one year before the scheduled phase-in begins would be calculated as: (10%*5 years) and added to the cumulative total).

(C) Low volume manufacturers of light-duty vehicles and light light-duty trucks shall certify 100 percent of their light-duty vehicle and light light-duty truck fleet in the 2004 and subsequent model years.

(ii) [Reserved]

(3) *A/C-on specific calibrations.* A/C-on specific calibrations (e.g. air to fuel ratio, spark timing, and exhaust gas recirculation), may be used which differ from A/C-off calibrations for given engine operating conditions (e.g., engine speed, manifold pressure, coolant temperature, air charge temperature, and any other parameters). Such calibrations must not unnecessarily reduce the NMHC+$NO_X$ emission control effectiveness during A/C-on operation when the vehicle is operated under conditions which may reasonably be expected to be encountered during normal operation and use. If reductions in control system NMHC+$NO_X$ effectiveness do occur as a result of such calibrations, the manufacturer shall, in the Application for Certification, specify the circumstances under which such reductions do occur, and the reason for the use of such calibrations resulting in such reductions in control system effectiveness. A/C-on specific ''open-loop'' or ''commanded enrichment'' air-fuel enrichment strategies (as defined below), which differ from A/C-off ''open-loop'' or ''commanded enrichment'' air-fuel enrichment strategies, may not be used, with the following exceptions: Cold-start and warm-up conditions, or, subject to Administrator approval, conditions requiring the protection of the vehicle, occupants, engine, or emission control hardware. With these exceptions, such strategies which are invoked based on manifold pressure, engine speed, throttle position, or other engine parameters shall use the same engine parameter criteria for the invoking of this air-fuel enrichment strategy and the same degree of enrichment regardless of whether the A/C is on or off. ''Open-loop'' or ''commanded'' air-fuel enrichment strategy is defined as enrichment of the air to fuel ratio beyond stoichiometry for the purposes of increasing engine power output and the protection of engine or emissions control hardware. However, ''closed-loop biasing,'' defined as small changes in the air-fuel ratio for the purposes of optimizing vehicle emissions or driveability, shall not be considered an ''open-loop'' or ''commanded'' air-fuel enrichment strategy. In addition, ''transient'' air-fuel enrichment strategy (or ''tip-in'' and ''tip-out'' enrichment), defined as the temporary use of an air-fuel ratio rich of stoichiometry at the beginning or duration of rapid throttle motion, shall not be considered an ''open-loop'' or ''commanded'' air-fuel enrichment strategy.

(4) *''Lean-on-cruise'' calibration strategies.* ''Lean-on-cruise'' air-fuel calibration strategies shall not be employed during vehicle operation in

normal driving conditions, unless such strategies are also substantially employed during the SFTP. A ''lean-on-cruise'' air-fuel calibration strategy is defined as the use of an air-fuel ratio significantly greater than stoichiometry, during non-deceleration conditions at speeds above 40 mph, for the purposes of improving fuel economy or other purposes. A/C-on ''lean-on-cruise'' strategies which differ from A/C-off ''lean-on-cruise'' strategies for a given engine operating condition (e.g., engine speed, manifold pressure, coolant temperature, air charge temperature, and any other parameters) shall not be used.

(5) *Applicability to alternative fuel vehicles.* These SFTP standards do not apply to vehicles certified on fuels other than gasoline and diesel fuel, but the standards do apply to the gasoline and diesel fuel operation of flexible-fuel vehicles and dual-fuel vehicles.

(6) *Single-roll electric dynamometer requirement.* For all vehicles certified to the SFTP standards, a single-roll electric dynamometer or a dynamometer which produces equivalent results, as set forth in § 86.108, must be used for all types of emission testing to determine compliance with the associated emission standards.

8. Section 86.1709–97 is redesignated as § 86.1709–99 and amended by revising the section heading, by redesignating Tables R97–8 through R97–14 as Tables R99–8 through R99–14, by revising the references ''R97–8'', ''R97–9'', ''R97–10'', ''R97–11'', ''R97–12'', ''R97–13'', and ''R97–14'' to read ''R99–8'', ''R99–9'', ''R99–10'', ''R99–11'', ''R99–12'', ''R99–13'', and ''R99–14'', respectively, wherever they appear in the section, and by adding paragraph (e) to read as follows:

**§ 86.1709–99 Exhaust emission standards for 1999 and later light light-duty trucks.**

* * * * *

(e) *SFTP Standards.* Exhaust emission standards from 2001 and later model year light light-duty trucks shall meet the additional SFTP standards in this paragraph (e) according to the implementation schedules in this paragraph (e). The standards set forth in this paragraph (e) refer to exhaust emissions emitted over the Supplemental Federal Test Procedure (SFTP) as set forth in subpart B of this part and collected and calculated in accordance with those procedures.

(1) *Tier 1 vehicles and TLEVs.* The SFTP exhaust emission levels from new 2001 and subsequent model year light light-duty trucks certified to the exhaust emission standards in § 86.099–9(a)(1)(i) and subsequent model year provisions and light light-duty trucks certified as TLEVs shall not exceed the standards in Table R99–14.1, according to the implementation schedule in paragraph (e)(1)(i) of this section.

TABLE R99–14.1.—SFTP EXHAUST EMISSION STANDARDS (G/MIL) FOR TIER 1 VEHICLES AND TLEVS

| Useful life | Fuel type | LVW (lbs) | NMHC+$NO_X$ composite | CO | | |
|---|---|---|---|---|---|---|
| | | | | A/C test | US06 test | Composite option |
| Intermediate | Gasoline | 0–3750 | 0.65 | 3.0 | 9.0 | 3.4 |
| | | 3751–5750 | 1.02 | 3.9 | 11.6 | 4.4 |
| | Diesel | 0–3750 | 1.48 | NA | 9.0 | 3.4 |
| | | 3751–5750 | NA | NA | NA | NA |
| Full | Gasoline | 0–3750 | 0.91 | 3.7 | 11.1 | 4.2 |
| | | 3751–5750 | 1.37 | 4.9 | 14.6 | 5.5 |
| | Diesel | 0–3750 | 2.07 | NA | 11.1 | 4.2 |
| | | 3751–5750 | NA | NA | NA | NA |

(i) *Phase-in requirements.* For the purposes of paragraph (e)(1) of this section only, each manufacturer's light-duty vehicle and light light-duty truck fleet shall be defined as the total projected number of light-duty vehicles certified to the exhaust emission standards in § 86.099-8(a)(1)(i) and subsequent model year provisions and light light-duty trucks certified to the exhaust emission standards in § 86.099–9(a)(1)(i) and subsequent model year provisions and certified as TLEVs sold in the United States. As an option, a manufacturer may elect to have its total light-duty vehicle and light light-duty truck fleet defined, for the purposes of this paragraph (e)(1) only, as the total projected number of the manufacturer's light-duty vehicles and light light-duty trucks, other than zero emission vehicles, certified and sold in the United States.

(A) Manufacturers of light-duty vehicles and light light-duty trucks, except low volume manufacturers, shall certify a minimum percentage of their light-duty vehicle and light light-duty truck fleet according to the following phase-in schedule:

| Model year | Percentage |
|---|---|
| 2001 | 25 |
| 2002 | 50 |
| 2003 | 85 |
| 2004 and subsequent | 100 |

(B) Low volume manufacturers of light-duty vehicles and light light-duty trucks shall certify 100 percent of their light-duty vehicle and light light-duty truck fleet in the 2004 and subsequent model years.

(ii) [Reserved]

(2) *LEVs and ULEVs.* The SFTP standards in this paragraph (e)(2) represent the maximum SFTP exhaust emissions at 4,000 miles +/− 250 miles or at the mileage determined by the manufacturer for emission data vehicles in accordance with § 86.1726. The SFTP exhaust emission levels from new 2001 and subsequent model year light light-duty truck LEVs and ULEVs shall not exceed the standards in the following table, according to the implementation schedule in paragraph (e)(2)(i) of this section:

TABLE R99–14.2.—SFTP EXHAUST EMISSION STANDARDS (G/MI) FOR LEVS AND ULEVS

| US06 test | | A/C test | |
|---|---|---|---|
| NMHC + $NO_X$ | CO | NMHC + $NO_x$ | CO |
| 0.14 | 8.0 | 0.20 | 2.7 |

(i) *Phase-in requirements.* For the purposes of this paragraph (e)(2) only, each manufacturer's light-duty vehicle and light light-duty truck fleet shall be defined as the total projected number of light-duty vehicles and light light-duty trucks certified as LEVs and ULEVs sold in the United States.

(A) Manufacturers of light-duty vehicles and light light-duty trucks, except low volume manufacturers, shall certify a minimum percentage of their light-duty vehicle and light light-duty truck fleet according to the following phase-in schedule:

| Model year | Percentage |
|---|---|
| 2001 | 25 |
| 2002 | 50 |
| 2003 | 85 |
| 2004 and subsequent | 100 |

(B) Manufacturers may use an ''Alternative or Equivalent Phase-in Schedule'' to comply with the phase-in requirements. An ''Alternative Phase-in'' is one that achieves at least equivalent emission reductions by the end of the last model year of the scheduled phase-in. Model-year emission reductions shall be calculated by multiplying the percent of vehicles (based on the manufacturer's projected California sales volume of the applicable vehicle fleet) meeting the new requirements per model year by the number of model years implemented prior to and including the last model year of the scheduled phase-in. The ''cumulative total'' is the summation of the model-year emission reductions (e.g., a four model-year 25/50/85/100 percent phase-in schedule would be calculated as: (25%*4 years) + (50%*3 years) + (85%*2 years) + (100%*1 year) = 520). Any alternative phase-in that results in an equal or larger cumulative total than the required cumulative total by the end of the last model year of the scheduled phase-in shall be considered acceptable by the Administrator under the following conditions: All vehicles subject to the phase-in shall comply with the respective requirements in the last model year of the required phase-in schedule; and if a manufacturer uses the optional phase-in percentage determination in paragraph (e)(1)(i) of this section, the cumulative total of model-year emission reductions as determined only for light-duty vehicles and light light-duty trucks certified to this paragraph (e)(2) must also be equal to or larger than the required cumulative total by the end of the 2004 model year. Manufacturers shall be allowed to include vehicles introduced before the first model year of the scheduled phase-in (e.g., in the previous example, 10 percent introduced one year before the scheduled phase-in begins would be calculated as: (10%*5 years) and added to the cumulative total).

(C) Low volume manufacturers of light-duty vehicles and light light-duty trucks shall certify 100 percent of their light-duty vehicle and light light-duty truck fleet in the 2004 and subsequent model years.

(ii) [Reserved]

(3) *A/C-on specific calibrations.* A/C-on specific calibrations (e.g. air to fuel ratio, spark timing, and exhaust gas recirculation), may be used which differ from A/C-off calibrations for given engine operating conditions (e.g., engine speed, manifold pressure, coolant temperature, air charge temperature, and any other parameters). Such calibrations must not unnecessarily reduce the NMHC+$NO_X$ emission control effectiveness during A/C-on operation when the vehicle is operated under conditions which may reasonably be expected to be encountered during normal operation and use. If reductions in control system NMHC+$NO_X$ effectiveness do occur as a result of such calibrations, the manufacturer shall, in the Application for Certification, specify the circumstances under which such reductions do occur, and the reason for the use of such calibrations resulting in such reductions in control system effectiveness. A/C-on specific ''open-loop'' or ''commanded enrichment'' air-fuel enrichment strategies (as defined below), which differ from A/C-off ''open-loop'' or ''commanded enrichment'' air-fuel enrichment strategies, may not be used, with the following exceptions: Cold-start and warm-up conditions, or, subject to Administrator approval, conditions requiring the protection of the vehicle, occupants, engine, or emission control hardware. With these exceptions, such strategies which are invoked based on manifold pressure, engine speed, throttle position, or other engine parameters shall use the same engine parameter criteria for the invoking of this air-fuel enrichment strategy and the same degree of enrichment regardless of whether the A/C is on or off. ''Open-loop'' or ''commanded'' air-fuel enrichment strategy is defined as enrichment of the air to fuel ratio beyond stoichiometry for the purposes of increasing engine power output and the protection of engine or emissions control hardware. However, ''closed-loop biasing,'' defined as small changes in the air-fuel ratio for the purposes of optimizing vehicle emissions or driveability, shall not be considered an ''open-loop'' or ''commanded'' air-fuel enrichment strategy. In addition, ''transient'' air-fuel enrichment strategy (or ''tip-in'' and ''tip-out'' enrichment), defined as the temporary use of an air-fuel ratio rich of stoichiometry at the beginning or duration of rapid throttle motion, shall not be considered an ''open-loop'' or ''commanded'' air-fuel enrichment strategy.

(4) *''Lean-on-cruise'' calibration strategies.* ''Lean-on-cruise'' air-fuel calibration strategies shall not be employed during vehicle operation in normal driving conditions, unless such strategies are also substantially employed during the SFTP. A ''lean-on-cruise'' air-fuel calibration strategy is defined as the use of an air-fuel ratio significantly greater than stoichiometry, during non-deceleration conditions at speeds above 40 mph, for the purposes of improving fuel economy or other purposes. A/C-on ''lean-on-cruise'' strategies which differ from A/C-off ''lean-on-cruise'' strategies for a given engine operating condition (e.g., engine speed, manifold pressure, coolant temperature, air charge temperature, and any other parameters) shall not be used.

(5) *Applicability to alternative fuel vehicles.* These SFTP standards do not apply to vehicles certified on fuels other than gasoline and diesel fuel, but the standards do apply to the gasoline and diesel fuel operation of flexible-fuel vehicles and dual-fuel vehicles.

(6) *Single-roll electric dynamometer requirement.* For all vehicles certified to the SFTP standards, a single-roll electric dynamometer or a dynamometer which produces equivalent results, as set forth in § 86.108, must be used for all types

of emission testing to determine compliance with the associated emission standards.

[FR Doc. 97–21138 Filed 8–21–96; 8:45 am]

BILLING CODE 6560–50–U

federal register

Friday
August 22, 1997

# Part III

# Department of Defense
# General Services Administration
# National Aeronautics and Space Administration

**48 CFR Chapter I, et al.**

**Federal Acquisition Regulations (FAR); Final Rules**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

## Federal Acquisition Circular 97–01; Introduction

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Summary presentation of final and interim rules.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97–01. Each rule follows this document in the order listed below. A companion document, the Small Entity Compliance Guide follows this FAC and may be located on the Internet.

**DATES:** For effective dates and comment dates, see separate documents which follow.

**FOR FURTHER INFORMATION CONTACT:** The analyst whose name appears (in the table below) in relation to each FAR case or subject area. For general information, contact Beverly Fayson, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 97–01 and specific FAR case number(s).

**SUPPLEMENTARY INFORMATION:** Federal Acquisition Circular 97–01 amends the Federal Acquisition Regulation (FAR) as specified below:

| Item | Subject | FAR case | Analyst |
|---|---|---|---|
| I | Business Process Innovation | 97–006 | De Stefano. |
| II | FASA and the Walsh-Healey Public Contracts Act | 96–601 | O'Neill. |
| III | Irrevocable Letters of Credit and Alternatives to Miller Act Bonds | 95–301 | O'Neill. |
| IV | Automatic Data Processing Equipment Leasing Costs | 96–010 | Olson. |
| V | Environmentally Sound Products | 92–054A | De Stefano. |
| VI | New FAR Certifications | 96–329 | De Stefano. |
| VII | Service Contracting | 95–311 | O'Neill. |
| VIII | ADP/Telecommunications Federal Supply Schedules | 96–602 | Nelson. |
| IX | Certificate of Competency (Interim) | 96–002 | Moss. |
| X | Economically Disadvantaged Individuals | 97–008 | Moss. |
| XI | Minority Small Business and Capital Ownership | 95–028 | Moss. |
| XII | Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts (Interim) | 94–610 | O'Neill. |
| XIII | Designation of Hong Kong | 97–019 | Linfield. |
| XIV | Foreign Differential Pay | 96–012 | Olson. |
| XV | Local Government Lobbying Costs | 96–003 | Nelson. |
| XVI | Independent Government Estimates—Construction | 97–005 | O'Neill. |
| XVII | Year 2000 Compliance | 96–607 | Nelson. |
| XVIII | Modification of Existing Contracts under FASA and FARA | 96–606 | De Stefano. |

### Item I—Business Process Innovation (FAR Case 97–006)

This final rule amends FAR 1.102–4(e) to encourage contracting officers, in their role as members of the Government acquisition team, to take the lead in encouraging business process innovations and ensuring that business decisions are sound.

### Item II—FASA and the Walsh-Healey Public Contracts Act (FAR Case 96–601)

The interim rule published as Item I of Federal Acquisition Circular 90–43 is converted to a final rule without change. The rule amends the FAR to eliminate the requirement that covered contractors under the Walsh-Healey Public Contracts Act must be either the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract.

### Item III—Irrevocable Letters of Credit and Alternatives to Miller Act Bonds (FAR Case 95–301)

The interim rule published as Item XVII of FAC 90–39 is revised and finalized. The rule amends FAR Parts 28 and 52 to provide for use of Irrevocable Letters of Credit as substitutes for corporate or individual surety on Miller Act bonds, and to provide alternatives to Miller Act payment bonds for construction contracts valued at $25,000 to $100,000, which are no longer subject to the Miller Act, in accordance with Section 4104(b)(1) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355).

### Item IV—Automatic Data Processing Equipment Leasing Costs (FAR Case 96–010)

The interim rule published as Item I of FAC 90–44 is converted to a final rule without change. The rule amends FAR Part 31 to remove the automatic data processing equipment leasing cost principle.

### Item V—Environmentally Sound Products (FAR Case 92–054A)

The interim rule published as Item II of FAC 90–27 is revised and finalized. The rule amends FAR Parts 1, 7, 10, 11, 13, 15, 23, 36, 42, and 52 to incorporate policies for the acquisition of environmentally preferable and energy-efficient products and services. The final rule differs from the interim rule in that it clarifies the acceptability of used, reconditioned, or remanufactured supplies, or former Government surplus property, proposed for use under a contract; revises the clause at 52.211–5 regarding acceptability of such material and limits its use in solicitations and contracts for commercial items; eliminates the provisions at 52.211–6 and 52.223–8 and the clause at 52.211–7; revises the clause at 52.223–9 to streamline reporting requirements regarding the recovered material content of EPA-designated items; and eliminates references to agency designation of items requiring minimum recovered material content.

### Item VI—New FAR Certifications (FAR Case 96–329)

This final rule adds a new section at FAR 1.107 to reflect the provisions of Section 4301(b)(2) of the Clinger-Cohen Act of 1996 (Pub. L. 104–106). Section 4301(b)(2) prohibits the inclusion of a new certification requirement in the FAR for contractors or offerors unless the certification requirement is specifically imposed by statute, or unless a written justification for such

certification requirement is provided to the Administrator for Federal Procurement Policy by the FAR Council and the Administrator approves in writing the inclusion of the certification.

**Item VII—Service Contracting (FAR Case 95–311)**

This final rule amends FAR Parts 7, 16, 37, 42, 46, and 52 to implement Office of Federal Procurement Policy (OFPP) Policy Letter 91–2, Service Contracting. The OFPP policy letter prescribes policies and procedures for use of performance-based contracting methods.

**Item VIII—ADP/Telecommunications Federal Supply Schedules (FAR Case 96–602)**

This final rule amends FAR Subpart 8.4 to clarify procedures for placing orders and obtaining price reductions under GSA Federal supply schedule contracts, and to add information regarding the ''GSA Advantage!'' on-line shopping service. Related amendments are made at FAR 13.202(a)(4) and 51.103.

**Item IX—Certificate of Competency (FAR Case 96–002)**

This interim rule amends FAR Parts 9 and 19 to implement revisions made to the Small Business Administration's (SBA) procurement assistance programs contained in 13 CFR Part 125. The rule notably (1) increases the threshold over which contracting officers may appeal the award of a Certificate of Competency (COC) from $25,000 to $100,000; (2) updates the names of SBA offices involved in processing COC's; and (3) implements the requirement that compliance with the limitations on subcontracting be considered an element of responsibility. In addition, this interim rule removes language implementing Section 15(c) of the Small Business Act (15 U.S.C. 644(c)) as amended by Section 305 of Public Law 103–403, Small Business Administration Reauthorization and Amendments Act of 1994. Section 305, which authorized public and private organizations for the handicapped to participate in acquisitions set aside for small businesses, has expired.

**Item X—Economically Disadvantaged Individuals (FAR Case 97–008)**

This final rule amends the definition of ''small disadvantaged business concern'' at FAR 19.001 to update the categories of individuals considered to be socially and economically disadvantaged. In accordance with the Small Business Administration's regulations at 13 CFR 124.105, the Maldives Islands has been added to the category of ''Subcontinent Asian Americans''; and Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, and Nauru have been added to the category of ''Asian Pacific Americans.''

**Item XI—Minority Small Business and Capital Ownership (FAR Case 95–028)**

The interim rule published as Item VII of FAC 90–43 is revised and finalized. The rule amends the FAR to reflect changes to the Small Business Administration's (SBA) regulations at 13 CFR Parts 121 and 124, which address the Minority Small Business and Capital Ownership Development Program. The rule clarifies eligibility and procedural requirements for procurements under the 8(a) program. The final rule differs from the interim rule in that it amends FAR 19.804–2 to reflect changes that the SBA is making in its processing of 8(a) requirements.

**Item XII—Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts (FAR Case 94–610)**

This interim rule adds a new FAR Subpart 22.12 implementing Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts, of October 20, 1994. The Executive Order and the interim rule require that workers on certain building service contracts be given the right of first refusal for employment with the successor contractor, if they would otherwise lose their jobs as a result of the award of the successor contract.

**Item XIII—Designation of Hong Kong (FAR Case 97–019)**

This final rule amends FAR 25.401 to add Hong Kong as a designated country under the Trade Agreements Act of 1979, as directed by the United States Trade Representative.

**Item XIV—Foreign Differential Pay (FAR Case 96–012)**

The interim rule published as Item VI of FAC 90–44 is converted to a final rule without change. The rule amends FAR 31.205–6 to remove the prohibition on the calculation of foreign differential pay based directly on an employee's specific increase in income taxes resulting from assignment overseas.

**Item XV—Local Government Lobbying Costs (FAR Case 96–003)**

The interim rule published as Item XI of FAC 90–43 is converted to a final rule without change. The rule amends FAR 31.205–22 to make allowable the costs of any lobbying activities to influence local legislation in order to directly reduce contract costs, or to avoid material impairment of the contractor's authority to perform the contract.

**Item XVI—Independent Government Estimates—Construction (FAR Case 97–005)**

This final rule amends FAR 36.203(a) and 36.605(a) to raise the threshold for a mandatory independent Government estimate of construction costs and architect-engineer costs from $25,000 to $100,000.

**Item XVII—Year 2000 Compliance (FAR Case 96–607)**

The interim rule published as Item XIV of FAC 90–45 is revised and finalized. The rule provides guidance regarding the acquisition of information technology that is Year 2000 compliant. The final rule differs from the interim rule in that it makes clarifying revisions to the definition of ''Year 2000 compliant'' at FAR 39.002.

**Item XVIII—Modification of Existing Contracts Under FASA and FARA (FAR Case 96–606)**

The interim rule published as Item VIII of FAC 90–44 is converted to a final rule without change. The rule amends FAR 43.102 to implement subsection 10002(e) of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) and subsections 4402 (d) and (e) of the Clinger-Cohen Act of 1996 (Pub. L. 104–106). The rule authorizes, but does not require, contracting officers, if requested by the contractor, to modify existing contracts without requiring consideration, to incorporate changes authorized by the Act.

Dated: August 14, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

**Federal Acquisition Circular**

Federal Acquisition Circular (FAC) 97–01 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 97–01 are effective October 21, 1997, except for Items IX, XII, and XIII, which are effective August 22, 1997.

Dated: August 7, 1997.

**Eleanor R. Spector,**

*Director, Defense Procurement.*

Dated: August 7, 1997.

**Tom Luedtke,**

*Deputy Associate Administrator for Procurement National Aeronautics and Space Administration.*

Dated: August 7, 1997.

**Edward C. Loeb,**

*Acting Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.*

[FR Doc. 97–22074 Filed 8–15–97; 1:12 pm]

BILLING CODE 6820–EP–P

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Part 1

**[FAC 97–01; FAR Case 97–006; Item I]**

**RIN 9000–AH64**

## Federal Acquisition Regulation; Business Process Innovation

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to state that contracting officers, in their role as members of the Government acquisition team, should take the lead in encouraging business process innovations and ensuring that business decisions are sound. 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:** Effective October 21, 1997.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAC 97–01, FAR case 97–006.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This final rule amends FAR 1.102–4(e) by adding a statement that contracting officers, in their role as members of the Government acquisition team, should take the lead in encouraging business process innovations and ensuring that business decisions are sound.

### B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comment is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 97–01, FAR case 97–006), in correspondence.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 1

Government procurement.

Dated: August 7, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Part 1 is amended as set forth below:

## PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1. The authority citation for 48 CFR Part 1 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 1.102–4 is amended by adding the following sentence at the end of paragraph (e):

**1.102–4 Role of the acquisition team.**

* * * * *

(e) * * * Contracting officers should take the lead in encouraging business process innovations and ensuring that business decisions are sound.

[FR Doc. 97–21486 Filed 8–21–97; 8:45 am]

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Parts 1, 9, 14, 19, 22, 33, and 52

**[FAC 97–01; FAR Case 96–601; Item II]**

**RIN 9000–AH31**

## Federal Acquisition Regulation; FASA and the Walsh-Healey Public Contracts Act

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule adopted as final.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to convert the interim rule published as Item I of Federal Acquisition Circular 90–43 on December 20, 1996, to a final rule without change. The rule amends the Federal Acquisition Regulation (FAR) to eliminate the requirement that covered contractors under the Walsh-Healey Public Contracts Act must be either the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract. 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:** Effective October 21, 1997.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501–3856. Please cite FAC 97–01, FAR case 96–601.

**SUPPLEMENTARY INFORMATION:**

### A. Background

On December 20, 1996 (61 FR 67409), the DoD, GSA, and NASA published an interim FAR rule implementing the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) amendments to the Walsh-Healey Public Contracts Act. The interim rule deleted the ''manufacturer'' or ''regular dealer'' requirements and all related definitions from the FAR, consistent with a Department of Labor final rule issued on

August 5, 1996 (61 FR 40714). No comments were received in response to the interim FAR rule. Therefore, the interim FAR rule is being converted to a final rule without change.

### B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule merely amends the FAR to conform to revisions to Department of Labor (DoL) regulations reflecting repeal of the ''manufacturer'' and ''regular dealer'' requirements under the Walsh-Healey Public Contracts Act. DoL has determined that the revisions to its regulations will not have a significant economic impact on a substantial number of small entities.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 1, 9, 14, 19, 22, 33, and 52

Government procurement.

### Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Parts 1, 9, 14, 19, 22, 33, and 52 which was published at 61 FR 67409, December 20, 1996, is adopted as a final rule without change.

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Dated: August 7, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

[FR Doc. 97–21487 Filed 8–21–97; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Parts 1, 28, and 52

**[FAC 97–01; FAR Case 95–301; Item III]**

**RIN 9000–AG99**

## Federal Acquisition Regulation; Irrevocable Letters of Credit and Alternatives to Miller Act Bonds

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule adopted as final with changes.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with changes, the interim rule published as Item XVII of Federal Acquisition Circular 90–39 on June 20, 1996. The rule amends the Federal Acquisition Regulation (FAR) to address the use of irrevocable letters of credit in lieu of surety on Miller Act bonds (OFPP Policy Letter 91–4) and alternatives to Miller Act Bonds, as required by Section 4101(b) of the Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103–355). 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.

**DATE:** Effective October 21, 1997.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501–3856. Please cite FAC 97–01, FAR case 95–301.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This final rule amends FAR Parts 1, 28, and 52 to provide for use of Irrevocable Letters of Credit as substitutes for corporate or individual surety on Miller Act bonds, and provides alternatives to Miller Act payment bonds for construction contracts valued at $25,000 to $100,000, which are no longer subject to the Miller Act, in accordance with Section 4104(b)(1) of FASA. An interim rule with request for comment was published in the **Federal Register** on June 20, 1996 (61 FR 31651). Comments were received from seven respondents. The final rule includes the following changes in response to public comments:

- Update of the references to reflect the current version of the Uniform Customs and Practice for Documentary Credits.
- Amendment of the definition of Irrevocable Letter of Credit (ILC). Deletion of application of the term ''unconditional'' to ILCs.
- Incorporation of requirements for a specific expiration date for ILCs used in lieu of surety on performance or payment bonds, with automatic extension for one-year periods, until the contracting officer notifies the financial institution that the Government is waiving the right to payment.
- Limitation of the requirement for confirmation of ILCs over $5 million to those issued by financial institutions that had letter of credit business of less than $25 million in the past year.
- Incorporation of an explicit requirement for credit rating service to be as specified in Office of Federal Procurement Policy Pamphlet No. 7.
- Amendment of the clause at 52.228–13, Alternative Payment Protections, to specify the amount of payment protection as 50 percent of the contract price, and to require payment protection within a certain number of days after contract award.

The Councils did not adopt a comment which recommended a change in the expiration date for ILCs from 60 to 75 days after the close of the bid acceptance period, as the comment appeared to be based on a misinterpretation of the rule. The recommended 75-day expiration period was based on the need for 60 days to cover the bid acceptance period, plus 10 days to cover the time necessary for submission of payment and performance bonds, and 5 additional days to cover mailing time. However, as written, the rule provides for 60 days in addition to the number of days required for the bid acceptance period; *i.e.*, if the bid acceptance period is 60 days, the rule requires the ILC to cover a total of 120 days before expiration.

### B. Regulatory Flexibility Act

The final rule is expected to have a significant positive 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 provides alternatives to Miller Act bonds for construction contracts between $25,000 and $100,000, which may be beneficial to

construction contractors. A Final Regulatory Flexibility Analysis (FRFA) has, therefore, been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. The analysis is summarized as follows:

This rule will apply to all businesses, large and small, which contract with the Government for construction. The objective is to make it easier for small construction contractors to provide payment protection, by providing alternatives for construction contracts valued between $25,000 and $100,000. In addition, the rule permits the use of Irrevocable Letters of Credit as security for Miller Act bonds, in lieu of corporate or individual sureties. The rule imposes no new recordkeeping or reporting requirements, and provides alternatives to Miller Act payment bonds for construction contracts which do not exceed $100,000.

### C. Paperwork Reduction Act

This rule will reduce the information collection requirements which the Office of Management and Budget (OMB) previously approved under 44 U.S.C. 3501, *et seq.* (OMB Control No. 9000–0045). The rule will reduce the number of respondents and responses by identifying and correcting an overlap in reporting of performance and payment and bid bonds.

### List of Subjects in 48 CFR Parts 1, 28, and 52

Government procurement.

Dated: August 7, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Accordingly, the interim rule amending 48 CFR Parts 28 and 52 which was published at 61 FR 31651, June 20, 1996, is adopted as final with changes as set forth below:

1. The authority citation for 48 CFR Parts 1, 28, 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 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. The table in section 1.106 is amended by removing the entries for 28.106–1(b) and 52.228–3; revising the entry for 52.228–2; and adding entries in numerical order to read as follows:

**1.106 OMB Approval under the Paperwork Reduction Act.**

| FAR segment | OMB control No. |
|---|---|
| * * * * * | |
| 28.106–1(e). | 9000–0001 |
| 28.106–1(n). | 9000–0119 |
| * * * * * | |
| 52.228–2 | 9000–0045 and 9000–0119 |
| 52.228–13 | 9000–0045 |
| 52.228–15 | 9000–0045 |
| 52.228–16 | 9000–0045 and 9000–0119 |
| * * * * * | |

## PART 28—BONDS AND INSURANCE

3. Section 28.000 is revised to read as follows:

**28.000 Scope of part.**

This part prescribes requirements for obtaining financial protection against losses under sealed bid and negotiated contracts. It covers bid guarantees, bonds, alternative payment protections, security for bonds, and insurance. The terms ''bid'' and ''bidders'' include ''proposal'' and ''offerors.''

4. Section 28.001 is amended by revising the definitions for ''Irrevocable letter of credit'' and ''Penal sum'' to read as follows:

**28.001 Definitions.**

* * * * *

*Irrevocable letter of credit* (ILC) means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money until the expiration date of the letter, upon presentation by the Government (the beneficiary) of a written demand therefor. Neither the financial institution nor the offeror/contractor can revoke or condition the letter of credit.

*Penal sum* or *penal amount* means the amount of money specified in a bond (or a percentage of the bid price in a bid bond) as the maximum payment for which the surety is obligated or the amount of security required to be pledged to the Government in lieu of a corporate or individual surety for the bond.

* * * * *

## Subpart 28.1—Bonds and Other Financial Protections

5. The heading of Subpart 28.1 is revised to read as set forth above.

6. Section 28.100 is revised to read as follows:

**28.100 Scope of subpart.**

This subpart prescribes requirements and procedures for the use of bonds, alternative payment protections, and all types of bid guarantees.

7. Section 28.102–2 is amended by revising the introductory text of paragraph (b)(1) and paragraphs (b)(2), (c)(1), and (c)(2) to read as follows:

**28.102–2 Amount required.**

* * * * *

(b) * * * (1) The penal amount of payment bonds or the amount of alternative payment protection shall equal—

* * * * *

(2) If the original contract price is $5 million or less, the Government may require additional protection if the contract price is increased.

(i) The penal amount of the total protection as revised shall meet the requirement of paragraph (b)(1) of this subsection.

(ii) The Government shall secure the required additional protection by directing the contractor to increase the penal sum of the existing bond or to obtain an additional bond, or to furnish additional alternative payment protection.

* * * * *

(c) * * * (1) When determining the penal sum of bonds or the amount of alternative payment protection for requirements contracts, the contracting officer shall consider the contract price to be the price payable for the estimated quantity.

(2) When determining the penal sum of bonds or the amount of alternative payment protection for indefinite-quantity contracts, the contracting officer shall consider the contract price to be the price payable for the specified minimum quantity. When the minimum quantity is exceeded, paragraphs (a)(2) and (b)(2) of this subsection apply.

* * * * *

8. Section 28.102–3 is amended by revising the section heading and the last sentence of paragraph (b) to read as follows:

**28.102–3 Contract clauses.**

* * * * *

(b) * * * Complete the clause by specifying the payment protections selected (see 28.102–1(b)(1)) and the deadline for submission.

9. Section 28.106–3 is revised to read as follows:

**28.106–3 Additional bond and security.**

(a) When additional bond coverage is required and is secured in whole or in part by the original surety or sureties, agencies shall use Standard Form 1415,

Consent of Surety and Increase of Penalty. Standard Form 1415 is authorized for local reproduction, and a copy of the form is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(b) When additional bond coverage is required and is secured in whole or in part by a new surety or by one of the alternatives described in 28.204 in lieu of corporate or individual surety, agencies shall use Standard Form 25, Performance Bond; Standard Form 1418, Performance Bond for Other Than Construction Contracts; Standard Form 25–A, Payment Bond; or Standard Form 1416, Payment Bond for Other Than Construction Contracts.

10. Section 28.106–8 is revised to read as follows:

**28.106–8 Payment to subcontractors or suppliers.**

The contracting officer will only authorize payment to subcontractors or suppliers from an ILC (or any other cash equivalent security) upon a judicial determination of the rights of the parties, a signed notarized statement by the contractor that the payment is due and owed, or a signed agreement between the parties as to amount due and owed.

## Subpart 28.2—Sureties and Other Security for Bonds

11. The heading of Subpart 28.2 is revised as set forth above.

12. Section 28.200 is revised to read as follows:

**28.200 Scope of subpart.**

This subpart prescribes procedures for the use of sureties and other security to protect the Government from financial losses.

**28.201 Requirements for security.**

13. Section 28.201 is amended by revising the section heading as set forth above, and in paragraph (b) by inserting the word ''other'' after ''or'' the first time it appears.

14. Section 28.204 is amended in paragraph (a) by revising the second sentence to read as follows:

**28.204 Alternatives in lieu of corporate or individual sureties.**

(a) * * * When any of those types of security are deposited, a statement shall be incorporated in the bond form pledging the security in lieu of execution of the bond form by corporate or individual sureties. * * *

* * * * *

15. Section 28.204–3 is amended by revising paragraphs (b), (c), (f) introductory text, (f)(2) introductory text, (f)(2)(ii)(B), (g) introductory text, (g)(1) and (h) to read as follows:

**28.204–3 Irrevocable letter of credit (ILC).**

* * * * *

(b) The ILC shall be irrevocable, require presentation of no document other than a written demand and the ILC (and letter of confirmation, if any), expire only as provided in paragraph (f) of this subsection, and be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (g) of this subsection.

(c) To draw on the ILC, the contracting officer shall use the sight draft set forth in the clause at 52.228–14, and present it with the ILC (including letter of confirmation, if any) to the issuing financial institution or the confirming financial institution (if any).

* * * * *

(f) The period for which financial security is required shall be as follows:

* * * * *

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the contracting officer provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:

* * * * *

(ii) * * *

(B) For performance bonds only, until completion of any warranty period.

(g) Only federally insured financial institutions rated investment grade or higher shall issue or confirm the ILC. Unless the financial institution issuing the ILC had letter of credit business of at least $25 million in the past year, ILCs over $5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least $25 million in the past year.

(1) The offeror/contractor shall provide the contracting officer a credit rating from a recognized commercial rating service as specified in Office of Federal Procurement Policy Pamphlet No. 7 (see 28.204–3(h)) that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC.

* * * * *

(h)(1) Additional information on credit rating services and investment grade ratings is contained within Office of Federal Procurement Policy Pamphlet No. 7, Use of Irrevocable Letters of Credit. This pamphlet may be obtained by calling the Office of Management and Budget's publications office at (202) 395–7332.

(2) A copy of the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, is available from: ICC Publishing, Inc., 156 Fifth Avenue, New York NY, 10010, Telephone: (212) 206–1150, Telefax: (212) 633–6025, E-mail: iccpub@interport.net

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

16. Section 52.228–2 is amended by revising the introductory text, the clause date, and paragraph (d) to read as follows:

**52.228–2 Additional Bond Security.**

As prescribed in 28.106–4(a), insert the following clause:

**Additional Bond Security (Oct 1997)**

* * * * *

(d) An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security. If the Contractor does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the Contracting officer has the right to immediately draw on the ILC.

(End of clause)

17. Section 52.228–13 is amended by revising the clause date and paragraphs (b), (c) and (f) to read as follows:

**52.228–13 Alternative Payment Protections.**

* * * * *

**Alternative Payment Protections (Oct 1997)**

* * * * *

(b) The amount of the payment protection shall be 50 percent of the contract price.

(c) The submission of the payment protection is required within _____ days of contract award.

* * * * *

(f) When a tripartite escrow agreement is used, the Contractor shall utilize only suppliers of labor and material that signed the escrow agreement.

(End of clause)

18. Section 52.228–14 is amended by revising:

(a) The clause date and paragraphs (a), (b), (c) introductory text, (c)(2) introductory text, (c)(2)(ii)(B), and (d);

(b) Following paragraph (e) in the ''Irrevocable Letter of Credit'', paragraphs 1, 2, 4, and 6; and

(c) Following paragraph (f) in the ILC confirmation, paragraphs 3, 4(a), and 6. The revised sections read as follows:

**52.228–14 Irrevocable Letter of Credit.**

* * * * *

**Irrevocable Letter of Credit (Oct 1997)**

(a) ''Irrevocable letter of credit'' (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the Government (the beneficiary) of a written demand therefor. Neither the financial institution nor the offeror/Contractor can revoke or condition the letter of credit.

(b) If the offeror intends to use an ILC in lieu of a bid bond, or to secure other types of bonds such as performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.

(c) The letter of credit shall be irrevocable, shall require presentation of no document other than a written demand and the ILC (including confirming letter, if any), shall be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and—

* * * * *

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/Contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the Contracting Officer provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:

* * * * *

(ii) * * *

(B) For performance bonds only, until completion of any warranty period.

(d) Only federally insured financial institutions rated investment grade or higher shall issue or confirm the ILC. The offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. Unless the financial institution issuing the ILC had letter of credit business of at least $25 million in the past year, ILCs over $5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least $25 million in the past year.

(e) * * *

1. We hereby establish this irrevocable and transferable Letter of Credit in your favor for one or more drawings up to United States $_____. This Letter of Credit is payable at [*issuing financial institution's and, if any, confirming financial institution's*] office at [*issuing financial institution's address and, if any, confirming financial institution's address]* and expires with our close of business on _____, or any automatically extended expiration date.

2. We hereby undertake to honor your or the transferee's sight draft(s) drawn on the issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

* * * * *

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written direction of the Government (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.

* * * * *

6. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 days after the resumption of our business.

(f) * * *

3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.

4. * * *

(a) At least 60 days prior to any such expiration date, we shall notify the Contracting Officer, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

* * * * *

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 days after the resumption of our business.

* * * * *

(End of clause)

[FR Doc. 97–21488 Filed 8–21–97; 8:45 am]

BILLING CODE 6820–EP–P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 1 and 31**

**[FAC 97–01; FAR Case 96–010; Item IV]**

**RIN 9000–AH41**

## Federal Acquisition Regulation; Automatic Data Processing Equipment Leasing Costs

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule adopted as final.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to convert the interim rule published as Item I of Federal Acquisition Circular 90–44 on December 31, 1996, to a final rule without change. The rule amends the Federal Acquisition Regulation (FAR) to remove the cost principle on automatic data processing equipment (ADPE) leasing costs. 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:** Effective October 21, 1997.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, Procurement Analyst, at (202) 501–3221. Please cite FAC 97–01, FAR case 96–010.

**SUPPLEMENTARY INFORMATION:**

### A. Background

An interim rule was published on December 31, 1996 (61 FR 69287). The interim rule deleted the ADPE definition at FAR 31.001, the cost principle at FAR 31.205–2, Automatic data processing equipment leasing costs, and references to the term ADPE found elsewhere in FAR Part 31. The interim rule is converted to a final rule without change.

Public comments were received from one source. The comments were considered in developing the final rule.

### B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and

the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive fixed-price basis and do not require application of the cost principle contained in this rule.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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.* The interim rule deleted a reporting and recordkeeping requirement at FAR 31.205–2 under OMB Control Number 9000–0072.

### List of Subjects in 48 CFR Parts 1 and 31

Government procurement.

### Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Parts 1 and 31 which was published at 61 FR 69287, December 31, 1996, is adopted as a final rule without change.

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Dated: August 7, 1997

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

[FR Doc. 97–21489 Filed 8–21–97; 8:45 am]

BILLING CODE 6820–EP–P

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Parts 1, 10, 11, 13, 15, 23, 36, 42, and 52

**[FAC 97–01; FAR Case 92–054A; Item V]**

**RIN 9000–AG40**

## Federal Acquisition Regulation; Environmentally Sound Products

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule adopted as final with changes.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with changes, the interim rule published as Item II of Federal Acquisition Circular 90–27 on May 31, 1995. The rule amends the Federal Acquisition Regulation (FAR) to incorporate policies for the acquisition of environmentally preferable and energy-efficient products and services. 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.

**DATE:** Effective October 21, 1997.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAC 97–01, FAR case 92–054A.

**SUPPLEMENTARY INFORMATION:**

### A. Background

An interim rule was published in the **Federal Register** at 60 FR 28494, May 31, 1995. Ninety comments were received from 18 respondents.

The Councils' analysis of those comments resulted in revisions to the rule to: revise the definitions of ''new'' and ''reconditioned'' at 11.001 and in the clause at 52.211–5; delete the definitions of ''material'' and ''other than new'' at 11.001 and in the clause at 52.211–5; add Executive Order No. 12909 of March 8, 1994, to the list of statutory authorities at 11.002; clarify the policy on acceptability of used, reconditioned, or remanufactured supplies, and former Government surplus property proposed for use under a contract; delete the definition of ''source reduction'' at 15.601; delete all requirements related to ''agency designated items'' in Subpart 23.4; add a definition of ''pollution prevention'' at 23.703; streamline the clauses at 52.211–5 through 52.211–7 by combining their requirements into the clause at 52.211–5; eliminate the solicitation provision at 52.223–8; and streamline the clause at 52.223–9.

### B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) has been performed. A copy of the FRFA may be obtained from the FAR Secretariat. The FRFA is summarized as follows:

This action is being taken to implement the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901, *et seq.*), as amended; Executive Order 12873, Federal Acquisition, Recycling, and Waste Prevention; Executive Order 12902, Energy Efficiency and Water Conservation at Federal Facilities; and Office of Federal Procurement Policy (OFPP) Policy Letter 92–4, Procurement of Environmentally-Sound and Energy-Efficient Products and Services.

The objective of this rule is to amend the FAR to clearly reflect the Government's preference for the acquisition of environmentally-sound and energy-efficient products and services and to establish an affirmative procurement program favoring items containing the maximum practicable content of recovered materials. The rule also implements policies for procurement of items for which the Environmental Protection Agency (EPA) has designated minimum recovered material content.

We received no public comments which specifically addressed the Initial Regulatory Flexibility Analysis.

The final rule's policies regarding acceptable new and used materials apply to all small and large entities that perform or propose to perform Government contracts. No statistics are maintained on the number of offerors that propose used, reconditioned, or remanufactured materials for use under Government contracts.

The requirements for minimum recovered material content for EPA-designated items apply to all entities that supply such items, with a value exceeding $10,000 per year, to the Government. However, the final rule exempts procurements under the simplified acquisition threshold of $100,000 from recovered material content reporting requirements. Based on Fiscal Year 1995 Governmentwide procurement statistics for Federal Supply/Service Codes which comprise EPA-designated items, we estimate that the Federal Government receives approximately 20,875 covered proposals per year from small entities, and awards approximately 2,280 covered contracts per year to small entities.

Several reporting requirements were streamlined or eliminated in this final rule. Certifications of recovered material content are now required only in response to solicitations which are for, or which specify the use of, EPA-designated items. Such certifications are no longer required on an annual basis and are required only under contracts which exceed the simplified acquisition threshold.

Reporting requirements related to agency-designated items have been eliminated.

We considered elimination of the requirement that an offeror notify the contracting officer when the offeror proposes the use of used, remanufactured, or reconditioned supplies. However, we determined that use of such supplies under many contracts might be unacceptable. The notification requirement will allow contracting officers to continue to decide on a case-by-case basis whether to permit use of such supplies.

### C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is deemed to apply because the final rule contains information collection requirements. The final rule reduces the information collection requirements contained in the interim rule and approved by the Office of Management and Budget (OMB) under OMB Control Number 9000–0134.

### List of Subjects in 48 CFR Parts 1, 10, 11, 13, 15, 23, 36, 42, and 52

Government procurement.

Dated: August 7, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

### Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Parts 1, 7, 10, 11, 13, 15, 23, 36, 42, and 52, which was published at 60 FR 28494, May 31, 1995, is hereby adopted as final with the following changes:

1. The authority citation for 48 CFR Parts 1, 7, 10, 11, 13, 15, 23, 36, 42, 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 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

#### 1.106 [Amended]

2. Section 1.106 is amended in the list following the introductory paragraph by removing the entries ''52.210–5'' and ''52.210–6'' and the corresponding OMB control numbers ''9000–0030'' in both places; and by adding the following entries in numerical order:

| FAR segment | OMB control No. |
|---|---|
| * * * * * | |
| 52.211–5 | 9000–0030 |
| * * * * * | |
| 52.223–4 | 9000–0134 |
| * * * * * | |
| 52.223–8 | 9000–0134 |
| * * * * * | |

## PART 11—DESCRIBING AGENCY NEEDS

3.–4. Section 11.001 is revised to read as follows:

#### 11.001 Definitions.

As used in this part—

*New* means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; *provided* that the supplies meet contract requirements, including, but not limited to, performance, reliability, and life expectancy.

*Reconditioned* means restored to the original normal operating condition by readjustments and material replacement.

*Recovered material* has the meaning provided such term in 23.402.

*Remanufactured* means factory rebuilt to original specifications.

*Virgin material* means previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore, or any undeveloped resource that is, or with new technology will become, a source of raw materials.

5. Section 11.002 is amended in paragraph (d) by revising the first sentence to read as follows:

#### 11.002 Policy.

* * * * *

(d) The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*), as amended, Executive Order 12873, dated October 20, 1993, and Executive Order 12902, dated March 8, 1994, establish requirements for the procurement of products containing recovered materials, and environmentally preferable and energy-efficient products and services. * * *

* * * * *

6. Section 11.101 is amended by revising paragraph (b) to read as follows:

#### 11.101 Order of precedence for requirements documents.

* * * * *

(b) Agencies should prepare product descriptions to achieve maximum practicable use of recovered material, other materials that are environmentally preferable, and products that are energy-efficient (see subparts 23.4 and 23.7).

7. Subpart 11.3, consisting of sections 11.301 and 11.302, is revised to read as follows:

### Subpart 11.3—Acceptable Material

#### 11.301 Policy.

(a) Agencies shall not require virgin material or supplies composed of or manufactured using virgin material unless compelled by law or regulation or unless virgin material is vital for safety or meeting performance requirements of the contract.

(b) Except when acquiring commercial items, agencies shall require offerors to identify used, reconditioned, or remanufactured supplies, or unused former Government surplus property, proposed for use under the contract. Such supplies or property may not be used in contract performance unless authorized by the contracting officer.

(c) When acquiring commercial items, the contracting officer shall consider the customary practices in the industry for the item being acquired. The contracting officer may require offerors to provide information on used, reconditioned, or remanufactured supplies, or unused former Government surplus property, proposed for use under the contract. The request for such information shall be included in the solicitation and shall, to the maximum practicable extent, be limited to information provided pursuant to normal commercial practices.

#### 11.302 Contract clause.

Except when acquiring commercial items, the contracting officer shall insert the clause at 52.211–5, Material Requirements, in solicitations and contracts for supplies.

## PART 13—SIMPLIFIED ACQUISITION PROCEDURES

8. Section 13.111 is amended by revising paragraph (h) to read as follows:

#### 13.111 Inapplicable provisions and clauses.

* * * * *

(h) 52.223–9, Certification and Estimate of Percentage of Recovered Material Content for EPA Designated Items.

## PART 15—CONTRACTING BY NEGOTIATION

#### 15.601 [Amended]

9. Section 15.601 is amended by removing the definition ''Source reduction''.

10. Section 15.605 is amended by revising paragraph (b)(1)(iv) to read as follows:

#### 15.605 Evaluation factors and subfactors.

* * * * *

(b) * * *

(1) * * *

(iv) Environmental objectives, such as promoting waste reduction and energy efficiency (see part 23), also shall be considered in every source selection, when appropriate. These considerations may be expressed in terms such as resource or energy conservation, pollution prevention, waste minimization, and recovered material content.

* * * * *

## PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

11. Section 23.400 is revised to read as follows:

### 23.400 Scope of subpart.

This subpart prescribes policies and procedures for acquisition of—

(a) Environmental Protection Agency (EPA) designated items for which agencies must develop and implement affirmative procurement programs pursuant to 42 U.S.C. 6901, *et seq.*, and Executive Order 12873; and

(b) Other products when preference is given to offers of products containing recovered material.

### 23.401 [Amended]

12. Section 23.401 is amended in the first sentence of paragraph (c) by inserting ''as amended,'' following ''October 20, 1993,''.

13. Section 23.402 is amended by adding an introductory sentence and revising the definitions ''EPA designated item'' and ''Postconsumer material'' to read as follows:

### 23.402 Definitions.

As used in this subpart—

*EPA designated item* means an item—

(1) That is or can be made with recovered material;

(2) That is listed by EPA in a procurement guideline (40 CFR part 247); and

(3) For which EPA has provided purchasing recommendations in a related Recovered Materials Advisory Notice (RMAN).

*Postconsumer material* means a material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Postconsumer material is a part of the broader category of ''recovered material.''

* * * * *

14. Sections 23.404 and 23.405 are revised to read as follows:

### 23.404 Procedures.

(a) *Applicability.* These procedures apply to all agency acquisitions of EPA designated items when—

(1) The price of the item exceeds $10,000; or

(2) The aggregate amount paid for items, or for functionally equivalent items, in the preceding fiscal year was $10,000 or more.

(b) *EPA designated items.* (1) EPA designates items that are or can be made with recovered materials in 40 CFR part 247 and accompanying RMAN's. The RMAN cites the applications for which the EPA items have been designated and the percentages of recovered material content.

(2) For EPA designated items, agencies shall establish an affirmative procurement program. The responsibilities for preparation, implementation, and monitoring of affirmative procurement programs shall be shared between technical or requirements personnel and procurement personnel. As a minimum, such programs shall include—

(i) A recovered materials preference program;

(ii) An agency promotion program;

(iii) A program for requiring reasonable estimates, certification, and verification of recovered material used in the performance of contracts; and

(iv) Annual review and monitoring of the effectiveness of the program.

(3) Acquisition of EPA designated items that do not meet the EPA minimum recovered material standards shall be approved by an official designated by the agency head based on a written determination that the items—

(i) Are not available within a reasonable period of time;

(ii) Are available only at unreasonable prices;

(iii) Are not available from a sufficient number of sources to maintain a satisfactory level of competition; or

(iv) Based on technical verification, fail to meet performance standards in the specifications. Technical or requirements personnel shall provide a written statement when this determination is used partially or totally as a basis for an exemption. This determination shall be made on the basis of National Institute of Standards and Technology guidelines in any case in which the material is covered by these guidelines.

(4) Contractor certifications required by the clause at 52.223–9 shall be consolidated and reported in accordance with agency procedures.

### 23.405 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.223–4, Recovered Material Certification, in solicitations that are for, or specify the use of, recovered materials.

(b) The contracting officer shall insert the clause at 52.223–9, Certification and Estimate of Percentage of Recovered Material Content for EPA Designated Items, in contracts exceeding the simplified acquisition threshold that are for, or specify the use of, an EPA designated item.

15. Section 23.703 is amended by adding an introductory sentence and, in alphabetical order, the definition ''Pollution prevention''; and by revising the definition ''Waste prevention'' to read as follows:

### 23.703 Definitions.

As used in this subpart—

* * * * *

*Pollution prevention* means any practice that—

(1) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal, and reduces the hazards to public health and the environment associated with the release of such substances, pollutants, and contaminants; or

(2) Reduces or eliminates the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources.

* * * * *

*Waste prevention* means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they become municipal solid waste. Waste prevention also refers to the reuse of products or materials.

* * * * *

16. Section 23.704 is revised to read as follows:

### 23.704 Policy.

(a) Agencies shall implement cost-effective contracting preference programs favoring the acquisition of environmentally preferable and energy-efficient products and services, and shall employ acquisition strategies that affirmatively implement the objectives in paragraph (b) of this section.

(b) The following environmental objectives shall be addressed throughout the acquisition process:

(1) Obtaining products and services considered to be environmentally preferable (based on EPA-issued guidance).

(2) Obtaining products considered to be energy-efficient; *i.e.*, products that are in the upper 25 percent of energy-efficiency for all similar products, or products that are at least 10 percent more efficient than the minimum level that meets Federal standards (see Executive Order 12902, Section 507).

(3) Eliminating or reducing the generation of hazardous waste and the need for special material processing (including special handling, storage, treatment, and disposal).

(4) Promoting the use of nonhazardous and recovered materials.

(5) Realizing life-cycle cost savings.

(6) Promoting cost-effective waste reduction when creating plans, drawings, specifications, standards, and other product descriptions authorizing material substitutions, extensions of shelf-life, and process improvements.

## PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

17. Section 36.601–3 is amended by revising paragraph (a) to read as follows:

### 36.601–3 Applicable contracting procedures.

(a) For facility design contracts, the statement of work shall require that the architect-engineer specify, in the construction design specifications, use of the maximum practicable amount of recovered materials consistent with the performance requirements, availability, price reasonableness, and cost-effectiveness. Where appropriate, the statement of work also shall require the architect-engineer to consider energy conservation, pollution prevention, and waste reduction to the maximum extent practicable in developing the construction design specifications.

* * * * *

18. Section 36.602–1 is amended by revising paragraph (a)(2) to read as follows:

### 36.602–1 Selection criteria.

(a) * * *

(2) Specialized experience and technical competence in the type of work required, including, where appropriate, experience in energy conservation, pollution prevention, waste reduction, and the use of recovered materials;

* * * * *

19. Section 36.602–3 is amended by revising paragraph (c) to read as follows:

### 36.602–3 Evaluation board functions.

* * * * *

(c) Hold discussions with at least three of the most highly qualified firms regarding concepts and the relative utility of alternative methods of furnishing the required services.

* * * * *

## PART 42—CONTRACT ADMINISTRATION

20. Section 42.302 is amended by revising paragraph (a)(68) introductory text and (a)(68)(i) to read as follows:

### 42.302 Contract administration functions.

(a) * * *

(68) Evaluate the contractor's environmental practices to determine whether they adversely impact contract performance or contract cost, and ensure contractor compliance with environmental requirements specified in the contract. Contracting officer responsibilities include, but are not limited to—

(i) Ensuring compliance with specifications requiring the use of environmentally preferable and energy-efficient materials and the use of materials or delivery of end items with the specified recovered material content. This shall occur as part of the quality assurance procedures set forth in part 46.

* * * * *

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

21. Section 52.211–5 is revised to read as follows:

### 52.211–5 Material Requirements.

As prescribed in 11.302, insert the following clause:

Material Requirements (Oct 1997)

(a) *Definitions.*

As used in this clause—

*New* means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; *provided* that the supplies meet contract requirements, including but not limited to, performance, reliability, and life expectancy.

*Reconditioned* means restored to the original normal operating condition by readjustments and material replacement.

*Recovered material* means waste materials and by-products that have been recovered or diverted from solid waste including postconsumer material, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

*Remanufactured* means factory rebuilt to original specifications.

*Virgin material* means previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore, or any undeveloped resource that is, or with new technology will become, a source of raw materials.

(b) Unless this contract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Contractor shall provide supplies that are new, as defined in this clause.

(c) A proposal to provide unused former Government surplus property shall include a complete description of the material, the quantity, the name of the Government agency from which acquired, and the date of acquisition.

(d) A proposal to provide used, reconditioned, or remanufactured supplies shall include a detailed description of such supplies and shall be submitted to the Contracting Officer for approval.

(e) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, shall not be used unless the Contractor has proposed the use of such supplies, and the Contracting Officer has authorized their use.

(End of clause)

### 52.211–6 and 52.211–7 [Removed and Reserved]

22. Sections 52.211–6 and 52.211–7 are removed and reserved.

23. Section 52.223–4 is revised to read as follows:

### 52.223–4 Recovered Material Certification.

As prescribed in 23.405(a), insert the following provision:

Recovered Material Certification (Oct 1997)

As required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(c)(3)(A)(i)), the offeror certifies, by signing this offer, that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by the applicable contract specifications.

(End of provision)

### 52.223–8 [Removed and reserved]

24. Section 52.223–8 is removed and reserved.

25. Section 52.223–9 is revised to read as follows:

### 52.223–9 Certification and Estimate of Percentage of Recovered Material Content for EPA Designated Items.

As prescribed in 23.405(b), insert the following clause:

Certification and Estimate of Percentage of Recovered Material Content For EPA Designated Items (Oct 1997)

(a) As required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(j)(2)(C)), the Contractor shall execute the following certification:

Certification

I,_____ (name of certifier), am an officer or employee responsible for the performance of this contract and hereby certify that the percentage of recovered material content for EPA Designated Items was at least the amount required by the applicable contract specifications.

_____

[Signature of the Officer or Employee]

_____

[Typed Name of the Officer or Employee]

_____

[Title]

_____

[Name of Company, Firm, or Organization]

_____

[Date]

(End of certification)

(b) The Contractor also shall estimate the percentage of recovered materials actually used in the performance of this contract. The estimate is in addition to the certification in paragraph (a) of this clause.

ESTIMATE

| EPA designated item | Total dollar value of EPA designated item | Percentage of recovered material content* |
|---|---|---|
| ..... | ..... | ..... |
| ..... | ..... | ..... |
| ..... | ..... | ..... |

*Where applicable, also include the percentage of postconsumer material content.

(c) The Contractor shall submit this certification and estimate upon completion of the contract to

*To be completed in accordance with agency procedures.

(End of clause)

26. Section 52.223–10 is amended by revising the clause date and paragraph (b) to read as follows:

**52.223–10 Waste Reduction Program.**

* * * * *

Waste Reduction Program (Oct 1997)

* * * * *

(b) Consistent with the requirements of Section 701 of Executive Order 12873, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. Any such program shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6901, *et seq.*) and implementing regulations.

(End of clause)

[FR Doc. 97–21490 Filed 8–21–97; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Part 1

**[FAC 97–1; FAR Case 96–329; Item VI]**

**RIN 9000–AH67**

## Federal Acquisition Regulation; New FAR Certifications

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to reflect the provisions of Section 4301(b)(2) of the Clinger-Cohen Act of 1996 (Pub. L. 104–106). Section 4301(b)(2) prohibits the inclusion of a new certification requirement in the FAR for contractors or offerors unless the certification requirement is specifically imposed by statute, or unless written justification for such certification requirement is provided to the Administrator for Federal Procurement Policy by the FAR Council and the Administrator approves in writing the inclusion of the certification. 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:** Effective October 21, 1997.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAC 97–01, FAR case 96–329.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This final rule adds a new section at FAR 1.107 to reflect the provisions of Section 4301(b)(2) of the Clinger-Cohen Act of 1996 (Pub. L. 104–106). Section 4301(b)(2) amends Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425) to prohibit the inclusion of a new certification requirement in the FAR for contractors or offerors unless the certification requirement is specifically imposed by statute, or unless written justification for such certification requirement is provided to the Administrator for Federal Procurement Policy by the FAR Council and the Administrator approves in writing the inclusion of the certification.

### B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 97–1, FAR case 96–329), in correspondence.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 1

Government procurement.

Dated: August 7, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Part 1 is amended as set forth below:

## PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1. The authority citation for 48 CFR Part 1 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 1.107 is added to read as follows:

**1.107 Certifications.**

In accordance with Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425), as amended by Section 4301 of the Clinger-Cohen Act of 1996 (Public Law 104–106), a new requirement for a certification by a contractor or offeror may not be included in this chapter unless—

(a) The certification requirement is specifically imposed by statute; or

(b) Written justification for such certification is provided to the Administrator for Federal Procurement Policy by the Federal Acquisition Regulatory Council, and the Administrator approves in writing the inclusion of such certification requirement.

[FR Doc. 97–21491 Filed 8–21–97; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Parts 7, 16, 37, 42, 46, and 52

**[FAC 97–01; FAR Case 95–311; Item VII]**

**RIN 9000–AH14**

## Federal Acquisition Regulation; Service Contracting

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Office of Federal Procurement Policy (OFPP) Policy Letter 91–2, Service Contracting. The OFPP policy letter prescribes policies and procedures for use of performance-based contracting methods. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This action is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** October 21, 1997.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501–3856. Please cite FAC 97–01, FAR case 95–311.

**SUPPLEMENTARY INFORMATION:**

## A. Background

This final rule amends FAR Parts 7, 16, 37, 42, 46, and 52 to establish policy for the Government's acquisition of services through the use of performance-based contracting methods.

A proposed rule was published in the **Federal Register** at 61 FR 40284, August 1, 1996. Thirty-three comments were received from nine respondents. All comments were considered in developing the final rule.

## B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis has been performed. The analysis is summarized as follows:

The rule revises the Federal Acquisition Regulation (FAR) to implement the Office of Federal Procurement Policy (OFPP) Policy Letter 91–2, Service Contracting. It also implements the statutory requirements of Section 834, Public Law 101–510 by adding language concerning uncompensated overtime and a prescription for use of a new solicitation provision, ''Identification of Uncompensated Overtime.'' Offerors are required to identify uncompensated overtime hours and the uncompensated overtime rate per hour, whether at the prime or subcontract level, when submitting a proposal responding to a solicitation estimated at $100,000 or more, for services being acquired on the basis of the number of hours to be provided rather than on the task to be performed. The final rule applies to all businesses, large and small that submit offers of $100,000 or more on service contracts that are based on the number of hours to be provided.

The adoption of the DoD provision concerning uncompensated overtime in the FAR conforms with the goals of the OFPP policy letter to avoid problems commonly found with service contracts resulting from: (1) Unnecessarily vague statements of work, which increase costs or make it difficult to control costs; (2) Insufficient use of fixed-price and incentive fee pricing arrangements for repetitive requirements, resulting in increased costs and inadequate incentive to improve performance; and (3) Inadequate contract administration plans, which lead to unauthorized commitments by the Government and delayed contract completion. The primary purpose for obtaining the information and using it during the source selection process is to discourage the use of mandatory uncompensated overtime in proposals from the entire professional and technical services industry. The provision regarding uncompensated overtime applies equally to large and small business entities and provides an additional method to improve the Government's ability to acquire services of the requisite quality and to assess contractor performance and price. Because both large and small business concerns must be dealt with equally in this matter, we believe that the rule does not create a disproportionate burden on small entities.

## C. Paperwork Reduction Act

The Paperwork Reduction Act is deemed to apply because the final rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning service contracting was submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, and approved under OMB Control No. 9000–0152. Public comments concerning this request were invited through the **Federal Register** notice published at 61 FR 40288, August 1, 1996.

## List of Subjects in 48 CFR Parts 7, 16, 37, 42, 46, and 52

Government procurement.

Dated: August 7, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Parts 7, 16, 37, 42, 46, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 7, 16, 37, 42, 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 7—ACQUISITION PLANNING

2. Section 7.103 is amended by adding paragraph (q) to read as follows:

### 7.103 Agency-head responsibilities.

* * * * *

(q) Ensuring that knowledge gained from prior acquisitions is used to further refine requirements and acquisition strategies. For services, greater use of performance-based contracting methods and, therefore, fixed-price contracts (see 37.602–5) should occur for follow-on acquisitions.

3. Section 7.105 is amended in the introductory text by adding a sentence at the end of the paragraph; by revising paragraphs (a)(1), (a)(4), and (b)(6); by redesignating paragraphs (b)(18) through (b)(20) as (b)(19) through (b)(21) and adding a new (b)(18) to read as follows:

### 7.105 Contents of written acquisition plans.

* * * Acquisition plans for service contracts shall describe the strategies for implementing performance-based contracting methods or shall provide rationale for not using those methods (see subpart 37.6).

(a) *Acquisition background and objectives*—(1) *Statement of need.* Introduce the plan by a brief statement of need. Summarize the technical and contractual history of the acquisition. Discuss feasible acquisition alternatives, the impact of prior acquisitions on those alternatives, and any related in-house effort.

* * * * *

(4) *Capability or performance.* Specify the required capabilities or performance characteristics of the supplies or the performance standards of the services being acquired and state how they are related to the need.

* * * * *

(b) * * *

(6) *Product or service descriptions.* Explain the choice of product or service description types (including performance-based contracting descriptions) to be used in the acquisition.

* * * * *

(18) *Contract administration.* Describe how the contract will be administered. In contracts for services, include how inspection and acceptance corresponding to the work statement's performance criteria will be enforced.

* * * * *

## PART 16—TYPES OF CONTRACTS

4. Section 16.104 is amended by adding paragraph (k) to read as follows:

### 16.104 Factors in selecting contract types.

* * * * *

(k) *Acquisition history.* Contractor risk usually decreases as the requirement is repetitively acquired. Also, product descriptions or descriptions of services

to be performed can be defined more clearly.

5. Section 16.402–2 is amended by revising the heading and paragraph (a); by redesignating paragraphs (b) through (g) as (c) through (h) and adding a new paragraph (b); and by revising the newly designated paragraph (e) to read as follows:

**16.402–2 Performance incentives.**

(a) Performance incentives may be considered in connection with specific product characteristics (*e.g.*, a missile range, an aircraft speed, an engine thrust, or a vehicle maneuverability) or other specific elements of the contractor's performance. These incentives should be designed to relate profit or fee to results achieved by the contractor, compared with specified targets.

(b) To the maximum extent practicable, positive and negative performance incentives shall be considered in connection with service contracts for performance of objectively measurable tasks when quality of performance is critical and incentives are likely to motivate the contractor.

* * * * *

(e) Performance tests and/or assessments of work performance are generally essential in order to determine the degree of attainment of performance targets. Therefore, the contract must be as specific as possible in establishing test criteria (such as testing conditions, instrumentation precision, and data interpretation) and performance standards (such as the quality levels of services to be provided).

* * * * *

6. Section 16.405–1 is amended by revising the introductory text of paragraph (b)(1), and the last sentence of paragraph (b)(2) to read as follows:

**16.405–1 Cost-plus-incentive-fee contracts.**

* * * * *

(b) *Application*. (1) A cost-plus-incentive-fee contract is appropriate for services or development and test programs when—

* * * * *

(2) * * * This approach also may apply to other acquisitions, if the use of both cost and technical performance incentives is desirable and administratively practical.

* * * * *

## PART 37—SERVICE CONTRACTING

7. Section 37.000 is amended by adding the following text as a new third sentence:

**37.000 Scope of part.**

* * * This part requires the use of performance-based contracting to the maximum extent practicable and prescribes policies and procedures for use of performance-based contracting methods (see subpart 37.6). * * *

8. Section 37.101 is amended by adding, in alphabetical order, the definition ''Performance-based contracting'' to read as follows:

**37.101 Definitions.**

* * * * *

*Performance-based contracting* means structuring all aspects of an acquisition around the purpose of the work to be performed as opposed to either the manner by which the work is to be performed or broad and imprecise statements of work.

* * * * *

9. Section 37.102 is amended by redesignating paragraphs (a) through (g) as (b) through (h) and adding a new paragraph (a) to read as follows:

**37.102 Policy.**

(a) Agencies shall use performance-based contracting methods (see subpart 37.6), to the maximum extent practicable, for the acquisition of services, including those acquired under supply contracts, except—

(1) Architect-engineer services acquired in accordance with 40 U.S.C. 541–544, as amended (see part 36);

(2) Construction (see part 36);

(3) Utility services (see part 41); or

(4) Services that are incidental to supply purchases.

* * * * *

10. Section 37.103 is amended by redesignating paragraphs ''(c)'' and ''(d)'' as ''(d)'' and ''(e)'' respectively, and adding a new paragraph (c) to read as follows:

**37.103 Contracting officer responsibility.**

* * * * *

(c) Ensure that performance-based contracting methods are used to the maximum extent practicable when acquiring services.

* * * * *

11. Section 37.106 is amended by adding paragraph (c) to read as follows:

**37.106 Funding and term of service contracts.**

* * * * *

(c) Agencies with statutory multiyear authority shall consider the use of this authority to encourage and promote economical business operations when acquiring services.

12. Sections 37.115 through 37.115–3 are added to read as follows:

**37.115 Uncompensated overtime.**

**37.115–1 Scope.**

The policies in this section are based on Section 834 of Public Law 101–510 (10 U.S.C. 2331).

**37.115–2 General policy.**

(a) Use of uncompensated overtime is not encouraged.

(b) When professional or technical services are acquired on the basis of the number of hours to be provided, rather than on the task to be performed, the solicitation shall require offerors to identify uncompensated overtime hours and the uncompensated overtime rate for direct charge Fair Labor Standards Act—exempt personnel included in their proposals and subcontractor proposals. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

**37.115–3 Solicitation provision.**

The contracting officer shall insert the provision at 52.237–10, Identification of Uncompensated Overtime, in all solicitations valued above the simplified acquisition threshold, for professional or technical services to be acquired on the basis of the number of hours to be provided.

13. Subpart 37.6, consisting of sections 37.600 through 37.602–5, is added to read as follows:

## Subpart 37.6—Performance-Based Contracting

Sec.

37.600 Scope of subpart.
37.601 General.
37.602 Elements of performance-based contracting.
37.602–1 Statements of work.
37.602–2 Quality assurance.
37.602–3 Selection procedures.
37.602–4 Contract type.
37.602–5 Follow-on and repetitive requirements.

## Subpart 37.6—Performance-Based Contracting

**37.600 Scope of subpart.**

This subpart prescribes policies and procedures for use of performance-based contracting methods. It implements OFPP Policy Letter 91–2, Service Contracting.

**37.601 General.**

Performance-based contracting methods are intended to ensure that required performance quality levels are achieved and that total payment is related to the degree that services performed meet contract standards. Performance-based contracts—

(a) Describe the requirements in terms of results required rather than the methods of performance of the work;

(b) Use measurable performance standards (*i.e.*, terms of quality, timeliness, quantity, etc.) and quality assurance surveillance plans (see 46.103(a) and 46.401(a));

(c) Specify procedures for reductions of fee or for reductions to the price of a fixed-price contract when services are not performed or do not meet contract requirements (see 46.407); and

(d) Include performance incentives where appropriate.

**37.602 Elements of performance-based contracting.**

**37.602–1 Statements of work.**

(a) Generally, statements of work shall define requirements in clear, concise language identifying specific work to be accomplished. Statements of work must be individually tailored to consider the period of performance, deliverable items, if any, and the desired degree of performance flexibility (see 11.105). In the case of task order contracts, the statement of work for the basic contract need only define the scope of the overall contract (see 16.504(a)(4)(iii)). The statement of work for each task issued under a task order contract shall comply with paragraph (b) of this subsection. To achieve the maximum benefits of performance-based contracting, task order contracts should be awarded on a multiple award basis (see 16.504(c) and 16.505(b)).

(b) When preparing statements of work, agencies shall, to the maximum extent practicable—

(1) Describe the work in terms of ''what'' is to be the required output rather than either ''how'' the work is to be accomplished or the number of hours to be provided (see 11.002(a)(2) and 11.101);

(2) Enable assessment of work performance against measurable performance standards;

(3) Rely on the use of measurable performance standards and financial incentives in a competitive environment to encourage competitors to develop and institute innovative and cost-effective methods of performing the work; and

(4) Avoid combining requirements into a single acquisition that is too broad for the agency or a prospective contractor to manage effectively.

**37.602–2 Quality assurance.**

Agencies shall develop quality assurance surveillance plans when acquiring services (see 46.103 and 46.401(a)). These plans shall recognize the responsibility of the contractor (see 46.105) to carry out its quality control obligations and shall contain measurable inspection and acceptance criteria corresponding to the performance standards contained in the statement of work. The quality assurance surveillance plans shall focus on the level of performance required by the statement of work, rather than the methodology used by the contractor to achieve that level of performance.

**37.602–3 Selection procedures.**

Agencies shall use competitive negotiations when appropriate to ensure selection of services that offer the best value to the Government, cost and other factors considered (see 15.605).

**37.602–4 Contract type.**

Contract types most likely to motivate contractors to perform at optimal levels shall be chosen (see subpart 16.1 and, for research and development contracts, see 35.006). To the maximum extent practicable, performance incentives, either positive or negative or both, shall be incorporated into the contract to encourage contractors to increase efficiency and maximize performance (see subpart 16.4). These incentives shall correspond to the specific performance standards in the quality assurance surveillance plan and shall be capable of being measured objectively. Fixed-price contracts are generally appropriate for services that can be defined objectively and for which the risk of performance is manageable (see subpart 16.1).

**37.602–5 Follow-on and repetitive requirements.**

When acquiring services that previously have been provided by contract, agencies shall rely on the experience gained from the prior contract to incorporate performance-based contracting methods to the maximum extent practicable. This will facilitate the use of fixed-price contracts for such requirements for services. (See 7.105 for requirement to address performance-based contracting strategies in acquisition plans. See also 16.104(k).)

## PART 42—CONTRACT ADMINISTRATION

14. Section 42.1102 is amended by adding the following sentence to the end of the paragraph:

**42.1102 Applicability.**

* * * See part 37, especially subpart 37.6, regarding surveillance of contracts for services.

## PART 46—QUALITY ASSURANCE

15. Section 46.103 is amended by revising paragraph (a) to read as follows:

**46.103 Contracting office responsibilities.**

* * * * *

(a) Receiving from the activity responsible for technical requirements any specifications for inspection, testing, and other contract quality requirements essential to ensure the integrity of the supplies or services (the activity responsible for technical requirements is responsible for prescribing contract quality requirements, such as inspection and testing requirements or, for service contracts, a quality assurance surveillance plan);

* * * * *

16. Section 46.401 is amended by revising paragraph (a) to read as follows:

**46.401 General.**

(a) Government contract quality assurance shall be performed at such times (including any stage of manufacture or performance of services) and places (including subcontractors' plants) as may be necessary to determine that the supplies or services conform to contract requirements. Quality assurance surveillance plans should be prepared in conjunction with the preparation of the statement of work. The plans should specify—

(1) All work requiring surveillance; and

(2) The method of surveillance.

* * * * *

17. Section 46.407 is amended in the introductory text of paragraph (f) by adding new second and third sentences to read as follows:

**46.407 Nonconforming supplies or services.**

* * * * *

(f) * * * For services, the contracting officer can consider identifying the value of the individual work requirements or tasks (subdivisions) that may be subject to price or fee reduction. This value may be used to determine an equitable adjustment for nonconforming services. * * *

* * * * *

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

18. Section 52.237–10 is added to read as follows:

**52.237–10 Identification of Uncompensated Overtime.**

As prescribed in 37.115–3, insert the following provision:

Identification of Uncompensated Overtime (Oct 1997)

(a) *Definitions.* As used in this provision—

*Uncompensated overtime* means the hours worked without additional compensation in excess of an average of 40 hours per week by direct charge employees who are exempt from the Fair Labor Standards Act. Compensated personal absences such as holidays, vacations, and sick leave shall be included in the normal work week for purposes of computing uncompensated overtime hours.

*Uncompensated overtime rate* is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40-hour work week basis at $20 per hour would be converted to an uncompensated overtime rate of $17.78 per hour ($20.00×40 divided by 45=$17.78).

(b) For any proposed hours against which an uncompensated overtime rate is applied, the offeror shall identify in its proposal the hours in excess of an average of 40 hours per week, by labor category at the same level of detail as compensated hours, and the uncompensated overtime rate per hour, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

(c) The offeror's accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) Proposals that include unrealistically low labor rates, or that do not otherwise demonstrate cost realism, will be considered in a risk assessment and will be evaluated for award in accordance with that assessment.

(e) The offeror shall include a copy of its policy addressing uncompensated overtime with its proposal.

(End of provision)

[FR Doc. 97–21492 Filed 8–21–97; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Parts 8, 13, and 51

**[FAC 97–01; FAR Case 96–602; Item VIII]**

**RIN 9000–AH29**

## Federal Acquisition Regulation; ADP/Telecommunications Federal Supply Schedules

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) with respect to GSA's Federal Supply Schedules program. 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:** Effective October 21, 1997.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–01, FAR case 96–602.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This final rule amends FAR Parts 8, 13, and 51 to recognize the reassignment of Federal Supply Schedule contracts for ADP/Telecommunications to GSA's Federal Supply Service to add new coverage on the ''GSA Advantage!'' program, clarify when ordering offices should seek price reductions under schedule contracts, and to clarify procedures for placing schedule orders above the maximum order threshold.

A proposed rule requesting comment was published in the **Federal Register** at 61 FR 52844, October 8, 1996. Thirty-eight comments were received from twelve respondents. All comments were considered in developing the final rule.

### B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely updates and clarifies guidance for Government agencies regarding use of the GSA Federal Supply Schedule program.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 8, 13, and 51

Government procurement.

Dated: August 7, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Parts 8, 13, and 51 are amended as set forth below:

1. The authority citation for 48 CFR Parts 8, 13, and 51 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 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Section 8.401 is revised to read as follows:

**8.401 General.**

(a) The Federal Supply Schedule program, directed and managed by the General Services Administration (GSA), provides Federal agencies with a simplified process for obtaining commonly used commercial supplies and services at prices associated with volume buying (also see 8.001). Indefinite delivery contracts (including requirements contracts) are established with commercial firms to provide supplies and services at stated prices for given periods of time. Similar systems of schedule-type contracting are used for military items managed by the Department of Defense. These systems are not included in the Federal Supply Schedule program covered by this subpart.

(b) The GSA schedule contracting office issues publications, entitled Federal Supply Schedules, containing the information necessary for placing delivery orders with schedule contractors. Ordering offices issue delivery orders directly to the schedule contractors for the required supplies and services. Ordering offices may request copies of schedules by completing GSA Form 457, FSS Publications Mailing List Application, and mailing it to the GSA Centralized Mailing List Service (7CAFL), P.O. Box 6477, Fort Worth, TX 76115. Copies of GSA Form 457 also may be obtained from this address.

(c) GSA offers an on-line shopping service called ''GSA Advantage!'' that enables ordering offices to search product specific information (*i.e.*, national stock number, part number, common name), review delivery options, place orders directly with contractors (or ask GSA to place orders on the agency's behalf), and pay

contractors for orders using the Governmentwide commercial purchase card (or pay GSA). Ordering offices may access the ''GSA Advantage!'' shopping service by connecting to the Internet and using a web browser to connect to the Acquisition Reform Network (http://www.arnet.gov) or the GSA, Federal Supply Service (FSS) Home Page (http://www.fss.gsa.gov). For more information or assistance, contact GSA at Internet e-mail address: gsa.advantage@gsa.gov.

3. Section 8.402 is added to read as follows:

**8.402 Applicability.**

Procedures in this subpart apply to Federal Supply Schedule contracts. Occasionally, special ordering procedures may be established. In such cases the procedures will be outlined in the ''Federal Supply Schedules''.

4. Section 8.404 is amended by revising paragraphs (a) and (b), and the paragraph heading of (c) to read as follows:

**8.404 Using schedules.**

(a) *General.* When agency requirements are to be satisfied through the use of Federal Supply Schedules as set forth in this subpart, the simplified acquisition procedures of part 13 and the small business set-aside provisions of subpart 19.5 do not apply except for the provision at 13.202(c)(3). Orders placed pursuant to a Multiple Award Schedule (MAS), using the procedures in this subpart, are considered to be issued pursuant to full and open competition (see 6.102(d)(3)). Therefore, when placing orders under Federal Supply Schedules, ordering offices need not seek further competition, synopsize the requirement, make a separate determination of fair and reasonable pricing, or consider small business set-asides in accordance with subpart 19.5. GSA has already determined the prices of items under schedule contracts to be fair and reasonable. By placing an order against a schedule using the procedures in this section, the ordering office has concluded that the order represents the best value and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government's needs.

(b) *Ordering procedures for optional use schedules*—(1) *Orders at or below the micro-purchase threshold.* Ordering offices can place orders at or below the micro-purchase threshold with any Federal Supply Schedule contractor.

(2) *Orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold.* Orders should be placed with the schedule contractor that can provide the supply or service that represents the best value. Before placing an order, ordering offices should consider reasonably available information about the supply or service offered under MAS contracts by using the ''GSA Advantage!'' on-line shopping service, or by reviewing the catalogs/pricelists of at least three schedule contractors and select the delivery and other options available under the schedule that meet the agency's needs. In selecting the supply or service representing the best value, the ordering office may consider—

(i) Special features of the supply or service that are required in effective program performance and that are not provided by a comparable supply or service;

(ii) Trade-in considerations;

(iii) Probable life of the item selected as compared with that of a comparable item;

(iv) Warranty considerations;

(v) Maintenance availability;

(vi) Past performance; and

(vii) Environmental and energy efficiency considerations.

(3) *Orders exceeding the maximum order threshold.* Each schedule contract has an established maximum order threshold. This threshold represents the point where it is advantageous for the ordering office to seek a price reduction. In addition to following the procedures in paragraph (b)(2) of this section and before placing an order that exceeds the maximum order threshold, ordering offices shall—

(i) Review additional schedule contractors' catalogs/pricelists or use the ''GSA Advantage!'' on-line shopping service;

(ii) Based upon the initial evaluation, generally seek price reductions from the schedule contractor(s) appearing to provide the best value (considering price and other factors); and

(iii) After price reductions have been sought, place the order with the schedule contractor that provides the best value and results in the lowest overall cost alternative (see 8.404(a)). If further price reductions are not offered, an order may still be placed, if the ordering office determines that it is appropriate.

(4) *Blanket purchase agreements (BPAs).* The establishment of Federal Supply Schedule BPAs is permitted (see 13.202(c)(3)) when following the ordering procedures in this subpart. All schedule contracts contain BPA provisions. Ordering offices may use BPAs to establish accounts with contractors to fill recurring requirements. BPAs should address the frequency of ordering and invoicing, discounts, and delivery locations and times.

*(5) Price reductions.* In addition to the circumstances outlined in paragraph (b)(3) of this section, there may be instances when ordering offices will find it advantageous to request a price reduction. For example, when the ordering office finds a schedule supply or service elsewhere at a lower price or when a BPA is being established to fill recurring requirements, requesting a price reduction could be advantageous. The potential volume of orders under these agreements, regardless of the size of the individual order, may offer the ordering office the opportunity to secure greater discounts. Schedule contractors are not required to pass on to all schedule users a price reduction extended only to an individual agency for a specific order.

(6) *Small business.* For orders exceeding the micro-purchase threshold, ordering offices should give preference to the items of small business concerns when two or more items at the same delivered price will satisfy the requirement.

(7) *Documentation.* Orders should be documented, at a minimum, by identifying the contractor the item was purchased from, the item purchased, and the amount paid. If an agency requirement in excess of the micro-purchase threshold is defined so as to require a particular brand name, product, or a feature of a product peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, the ordering office shall include an explanation in the file as to why the particular brand name, product, or feature is essential to satisfy the agency's needs.

(c) *Ordering procedures for mandatory use schedules.* * * *

## PART 13—SIMPLIFIED ACQUISITION PROCEDURES

5. Section 13.202 is amended by adding paragraph (a)(4) and revising paragraph (c)(3) to read as follows:

**13.202 Establishment of blanket purchase agreements (BPAs).**

(a) * * *

(4) There is no existing requirements contract for the same supply or service that the contracting activity is required to use.

* * * * *

(c) * * *

(3) Federal Supply Schedule contractors, if not inconsistent with the

terms of the applicable schedule contract.

* * * * *

## PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

**51.103 [Amended]**

6. Section 51.103 is amended by removing paragraph (c) and redesignating paragraph (d) as (c).

[FR Doc. 97–21493 Filed 8–21–97; 8:45 am]

BILLING CODE 6820–EP–P

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Parts 9 and 19

**[FAC 97–01; FAR Case 96–002; Item IX]**

**RIN 9000–AH66**

## Federal Acquisition Regulation; Certificate of Competency

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement revisions made to the Small Business Administration's regulations covering the procurement assistance programs. 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:** *Effective date:* August 22, 1997

*Comment Date:* Comments should be submitted to the FAR Secretariat at the address shown below on or before October 21, 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 the Internet should be addressed to: farcase.96–002@gsa.gov.

Please cite FAC 97–01, FAR case 96–002 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–01, FAR case 96–002.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This interim rule amends FAR Parts 9 and 19 to comply with revisions made to the Small Business Administration's (SBA) procurement assistance programs contained in 13 CFR Part 125 (61 FR 3310, January 31, 1996). This rule increases the threshold over which contracting officers may appeal the award of a Certificate of Competency (COC) from $25,000 to $100,000; updates the names of SBA offices involved in processing COCs; and implements the requirement that compliance with the limitations on subcontracting be considered an element of responsibility. Also, this interim rule removes language implementing Section 15(c) of the Small Business Act (15 U.S.C. 644(c)) as amended by Section 305 of Public Law 103–403, Small Business Administration Reauthorization and Amendments Act of 1994. Section 305, which authorized public and private organizations for the handicapped to participate in acquisitions set aside for small businesses, has expired.

### B. Regulatory Flexibility Act

This interim 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 does not impose any new requirements on contractors, large or small. The Small Business Administration has certified that the revisions to 13 CFR 125 being implemented by this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subparts also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 97–01, FAR case 96–002) in correspondence.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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.*

### D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to conform the Federal Acquisition Regulation to revisions made in 13 CFR Part 125, pertaining to the Small Business Administration (SBA) procurement assistance programs. The SBA revisions became effective on March 1, 1996. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

### List of Subjects in 48 CFR Parts 9 and 19

Government procurement.

Dated: August 7, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Parts 9 and 19 are amended as set forth below:

1. The authority citation for 48 CFR Parts 9 and 19 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 9—CONTRACTOR QUALIFICATIONS

2. Section 9.103 is amended in paragraph (b) by revising the third sentence to read as follows:

**9.103 Policy.**

(b) * * * If the prospective contractor is a small business concern, the contracting officer shall comply with subpart 19.6, Certificates of Competency and Determinations of Responsibil- * * *

* * * * *

3. Section 9.104–3 is amended in paragraph (a) by adding a sentence at the end, and in paragraph (d) by redesignating the text as paragraph

(d)(1) and by adding (d)(2) to read as follows:

**9.104–3 Application of standards.**

(a) * * * Consideration of a prime contractor's compliance with limitations on subcontracting shall take into account the time period covered by the contract base period or quantities plus option periods or quantities, if such options are considered when evaluating offers for award.

* * * * *

(d) * * * (1) * * *

(2) A small business that is unable to comply with the limitations on subcontracting at 52.219–14 may be considered nonresponsible.

## PART 19—SMALL BUSINESS PROGRAMS

**19.001 [Amended]**

4. Section 19.001 is amended by removing definitions for ''Handicapped individual'' and ''Public or private organization for the handicapped'', and in the definition of ''Nonmanufacturer rule'' by removing ''121.906'' and inserting ''121.406'' in its place.

**19.201 [Amended]**

5. Section 19.201(c) is amended in the introductory text by removing ''and 13 CFR 125.4(g)(7)''.

**19.302 [Amended]**

6. Section 19.302 is amended:

(a) In paragraph (c)(1) by removing the word ''Regional'' and inserting ''Area'' in its place;

(b) In the introductory text of paragraph (d) by removing ''13 CFR 121.9'' and inserting ''13 CFR 121.10'' in its place;

(c) In paragraphs (g)(2) and (i)(1) by removing ''Regional Administrator'' and inserting ''Area Director'' in its place;

(d) In (i)(2) by removing ''a Regional Administrator's'' and inserting ''an Area Director's'' in its place;

(e) In (i)(3) by removing ''121.11'' and inserting ''121.1001'' in its place; and

(f) In (j), in the first and third sentences, by removing the word ''regional'' and inserting ''area'' in its place; and in the first sentence parenthetical by removing ''above'' and inserting ''of this section'' in its place.

7. Section 19.508(e) is revised to read as follows:

**19.508 Solicitation provisions and contract clauses.**

* * * * *

(e) The contracting officer shall insert the clause at 52.219–14, Limitations on Subcontracting, in solicitations and contracts for supplies, services, and construction, if any portion of the requirement is to be set aside for small business and the contract amount is expected to exceed $100,000.

## Subpart 19.6—Certificates of Competency and Determinations of Responsibility

8. The heading of Subpart 19.6 is revised to read as set forth above.

9. Section 19.601 is amended by revising paragraph (a); by redesignating (c) as (e); and by adding new paragraphs (c) and (d) to read as follows:

**19.601 General.**

(a) A Certificate of Competency (COC) is the certificate issued by the Small Business Administration (SBA) stating that the holder is responsible (with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, tenacity, and limitations on subcontracting) for the purpose of receiving and performing a specific Government contract.

* * * * *

(c) The COC program is applicable to all Government acquisitions. A contracting officer shall, upon determining an apparent successful small business offeror to be nonresponsible, refer that small business to the SBA for a possible COC, even if the next acceptable offer is also from a small business.

(d) When a solicitation requires a small business to adhere to the limitations on subcontracting, a contracting officer's finding that a small business cannot comply with the limitation shall be treated as an element of responsibility and shall be subject to the COC process. When a solicitation requires a small business to adhere to the definition of a nonmanufacturer, a contracting officer's determination that the small business does not comply shall be processed in accordance with subpart 19.3.

* * * * *

10. Section 19.602–1 is amended by revising the introductory text of paragraphs (a) and (a)(2), (c) introductory text, and (c)(2); and by adding (e) to read as follows:

**19.602–1 Referral.**

(a) Upon determining and documenting that an apparent successful small business offeror lacks certain elements of responsibility (including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, tenacity, and limitations on subcontracting), the contracting officer shall—

* * * * *

(2) Refer the matter to the cognizant SBA Government Contracting Area Office (Area Office) serving the area in which the headquarters of the offeror is located, in accordance with agency procedures, except that referral is not necessary if the small business concern—

* * * * *

(c) The referral shall include—

* * * * *

(2) If applicable, a copy of the following:

(i) Solicitation.

(ii) Final offer submitted by the concern whose responsibility is at issue for the procurement.

(iii) Abstract of bids or the contracting officer's price negotiation memorandum.

(iv) Preaward survey.

(v) Technical data package (including drawings, specifications and statement of work).

(vi) Any other justification and documentation used to arrive at the nonresponsibility determination.

* * * * *

(e) Contract award shall be withheld by the contracting officer for a period of 15 business days (or longer if agreed to by the SBA and the contracting officer) following receipt by the appropriate SBA Area Office of a referral that includes all required documentation.

11. Section 19.602–2 is revised to read as follows:

**19.602–2 Issuing or denying a Certificate of Competency (COC).**

Within 15 business days (or a longer period agreed to by the SBA and the contracting agency) after receiving a notice that a small business concern lacks certain elements of responsibility, the SBA Area Office will take the following actions:

(a) Inform the small business concern of the contracting officer's determination and offer it an opportunity to apply to the SBA for a COC. (A concern wishing to apply for a COC should notify the SBA Area Office serving the geographical area in which the headquarters of the offeror is located.)

(b) Upon timely receipt of a complete and acceptable application, elect to visit the applicant's facility to review its responsibility.

(1) The COC review process is not limited to the areas of nonresponsibility cited by the contracting officer.

(2) The SBA may, at its discretion, independently evaluate the COC applicant for all elements of responsibility, but may presume responsibility exists as to elements other than those cited as deficient.

(c) Consider denying a COC for reasons of nonresponsibility not originally cited by the contracting officer.

(d) When the Area Director determines that a COC is warranted (for contracts valued at $25,000,000 or less), notify the contracting officer and provide the following options:

(1) Accept the Area Director's decision to issue a COC and award the contract to the concern. The COC issuance letter will then be sent, including as an attachment a detailed rationale for the decision; or

(2) Ask the Area Director to suspend the case for one or more of the following purposes:

(i) To permit the SBA to forward a detailed rationale for the decision to the contracting officer for review within a specified period of time.

(ii) To afford the contracting officer the opportunity to meet with the Area Office to review all documentation contained in the case file and to attempt to resolve any issues.

(iii) To submit any information to the SBA Area Office that the contracting officer believes the SBA did not consider (at which time the SBA Area Office will establish a new suspense date mutually agreeable to the contracting officer and the SBA).

(iv) To permit resolution of an appeal by the contracting agency to SBA Headquarters under 19.602–3. However, there is no contracting officer's appeal when the Area Office proposes to issue a COC valued at $100,000 or less.

(e) At the completion of the process, notify the concern and the contracting officer that the COC is denied or is being issued.

(f) Refer recommendations for issuing a COC on contracts greater than $25,000,000 to SBA Headquarters.

12. Section 19.602–3 is revised to read as follows:

**19.602–3 Resolving differences between the agency and the Small Business Administration.**

(a) *COCs valued between $100,000 and $25,000,000.* (1) When disagreements arise about a concern's ability to perform, the contracting officer and the SBA shall make every effort to reach a resolution before the SBA takes final action on a COC. This shall be done through the complete exchange of information and in accordance with agency procedures. If agreement cannot be reached between the contracting officer and the SBA Area Office, the contracting officer shall request that the Area Office suspend action and refer the matter to SBA Headquarters for review. The SBA Area Office shall honor the request for a review if the contracting officer agrees to withhold award until the review process is concluded. Without an agreement to withhold award, the SBA Area Office will issue the COC in accordance with applicable SBA regulations.

(2) SBA Headquarters will furnish written notice to the procuring agency's Director, Office of Small and Disadvantaged Business Utilization (OSDBU) or other designated official (with a copy to the contracting officer) that the case file has been received and that an appeal decision may be requested by an authorized official.

(3) If the contracting agency decides to file an appeal, it must notify SBA Headquarters through its procuring agency's Director, OSDBU, or other designated official, within 10 business days (or a time period agreed upon by both agencies) that it intends to appeal the issuance of the COC.

(4) The appeal and any supporting documentation shall be filed by the procuring agency's Director, OSDBU, or other designated official, within 10 business days (or a period agreed upon by both agencies) after SBA Headquarters receives the agency's notification in accordance with paragraph (a)(3) of this subsection.

(5) The SBA Associate Administrator for Government Contracting will make a final determination, in writing, to issue or to deny the COC.

(b) *SBA Headquarters' decisions on COCs valued over $25,000,000.* (1) Prior to taking final action, SBA Headquarters will contact the contracting agency and offer it the following options:

(i) To request that the SBA suspend case processing to allow the agency to meet with SBA Headquarters personnel and review all documentation contained in the case file; or

(ii) To submit to SBA Headquarters for evaluation any information that the contracting agency believes has not been considered.

(2) After reviewing all available information, the SBA will make a final decision to either issue or deny the COC.

(c) *Reconsideration of a COC after issuance.* (1) The SBA reserves the right to reconsider its issuance of a COC, prior to contract award, if—

(i) The COC applicant submitted false information or omitted materially adverse information; or

(ii) The COC has been issued for more than 60 days (in which case the SBA may investigate the firm's current circumstances).

(2) When the SBA reconsiders and reaffirms the COC, the procedures in subsection 19.602–2 do not apply.

(3) Denial of a COC by the SBA does not preclude a contracting officer from awarding a contract to the referred concern, nor does it prevent the concern from making an offer on any other procurement.

[FR Doc. 97–21494 Filed 8–21–97; 8:45 am]

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Part 19

**[FAC 97–01; FAR Case 97–008; Item X]**

**RIN 9000–AH65**

## Federal Acquisition Regulation; Economically Disadvantaged Individuals

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to update the definition of ''small disadvantaged business concern'' for conformance with Small Business Administration regulations. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

**DATES:** Effective October 21, 1997.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–01, FAR case 97–008.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This final rule amends the definition of ''small disadvantaged business concern'' at FAR 19.001 to update the categories of individuals considered to be socially and economically

disadvantaged. In accordance with the Small Business Administration regulations at 13 CFR 124.105, the Maldives Islands has been added to the category of ''Subcontinent Asian Americans''; and Macao, Hong Kong, Fiji, Tonga, Kirabati, Tuvalu, and Nauru have been added to the category of ''Asian Pacific Americans.''

**B. Regulatory Flexibility Act**

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 97–01, FAR case 97–008), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the 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 19**

Government procurement.

Dated: August 7, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Part 19 is amended as set forth below:

## PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR Part 19 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 19.001 is amended by revising paragraphs (b)(1) and (b)(2) under the definition ''Small disadvantaged business concern'' to read as follows:

**19.001 Definitions.**

* * * * *

*Small disadvantaged business concern* * * *

(b) * * * (1) *Subcontinent Asian Americans* means United States citizens whose origins are in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal.

(2) *Asian Pacific Americans* means United States citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, the Federated States of Micronesia, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru.

* * * * *

[FR Doc. 97–21495 Filed 8–21–97; 8:45 am]

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Parts 19 and 52

**[FAC 97–01; FAR Case 95–028; Item XI]**

**RIN 9000–AH34**

## Federal Acquisition Regulation; Minority Small Business and Capital Ownership

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule adopted as final with changes.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with changes, the interim rule that was published as Item VII of Federal Acquisition Circular 90–43 on December 20, 1996. The rule amends the Federal Acquisition Regulation (FAR) to reflect changes to the Small Business Administration's (SBA) regulations at 13 CFR Parts 121 and 124, which address the Minority Small Business and Capital Ownership Development Program. The rule clarifies eligibility and procedural requirements for procurements under the 8(a) program. 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:** Effective October 21, 1997.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–01, FAR case 95–028.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

On June 7, 1995, SBA published, as a final rule, changes to its regulations at 13 CFR Parts 121 and 124, which cover the Minority Small Business and Capital Ownership Development Program. As a result of these modifications, the FAR had some inconsistencies regarding who was eligible for a particular 8(a) procurement. An interim FAR rule was published in the **Federal Register** at 61 FR 67420, December 20, 1996 to correct these inconsistencies. This rule finalizes the interim rule with minor amendments to reflect changes that SBA is making in its processing of 8(a) requirements. One comment was received in response to the interim rule. This comment was considered in the development of the final rule.

**B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any new requirements on offerors or contractors. The rule amends the FAR to reflect changes to Small Business Administration (SBA) regulations designed to streamline the operation of the 8(a) program and to ease certain restrictions perceived to be burdensome on program participants. The SBA has certified that the changes to its regulations will not have a significant economic impact on a substantial number of small entities.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the 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 19 and 52**

Government procurement.

Dated: August 7, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

## Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Parts 19 and 52 which was published at 61 FR 67420, December 20, 1996, is adopted as final with the following change:

1. The authority citation for 48 CFR Parts 19 and 52 continues to read as follows:

## PART 19—SMALL BUSINESS PROGRAMS

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 19.804–2 is amended by revising paragraphs (b)(2) and (c) to read as follows:

### 19.804–2 Agency offering.

* * * * *

(b) * * *

(2) Sole source requirements, other than construction, should be forwarded directly to the district office that services the nominated firm. If the contracting officer is not nominating a specific firm, the offering letter should be forwarded to the district office servicing the geographical area in which the contracting office is located.

(c) All requirements for 8(a) competition, other than construction, should be forwarded to the district office servicing the geographical area in which the contracting office is located. All requirements for 8(a) construction competition should be forwarded to the district office servicing the geographical area in which all or the major portion of the construction is to be performed. All requirements, including construction, shall be synopsized in the Commerce Business Daily. For construction, the synopsis shall include the geographical area of the competition set forth in the SBA's acceptance letter.

[FR Doc. 97–21496 Filed 8–21–97; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Parts 22 and 52

**[FAC 97–01; FAR Case 94–610; Item XII]**

**RIN 9000–AH62**

## Federal Acquisition Regulation; Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts, signed by the President on October 20, 1994 (59 FR 53559, October 24, 1994). The Executive Order requires that workers on certain building service contracts be given the right of first refusal for employment with the successor contractor, if the workers would otherwise lose their jobs as a result of the award of the successor contract. 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:** *Effective Date:* August 22, 1997.

*Applicability:* With respect to solicitations and contracts for building service contracts covered by this regulation, the following applies:

(1) For solicitations issued and contracts awarded on or after the effective date of this rule, include the clause at 52.222–50, Nondisplacement of Qualified Workers, except as provided in paragraph (2)(a) below.

(2) Include the clause at 52.222–50, Nondisplacement of Qualified Workers, where practicable by—

(a) Amending solicitations issued, but not awarded, prior to the effective date of the rule; or

(b) Modifying contracts awarded prior to the effective date of this rule.

*Comment Date:* Comments should be submitted to the FAR Secretariat at the address shown below on or before October 21, 1997 to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to: farcase.94–610@gsa.gov.

Please cite FAC 97–01, FAR case 94–610 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501–3856. Please cite FAC 97–01, FAR case 94–610.

**SUPPLEMENTARY INFORMATION:**

### A. Background

Executive Order 12933 was signed October 20, 1994, by President Clinton and published in the **Federal Register** on October 24, 1994 (59 FR 53559). The purpose and need for the Executive Order are clearly stated in the Executive Order itself:

> When a service contract for the maintenance of a public building expires and a follow-on contract is awarded for the same service, the successor contractor typically hires the majority of the predecessor's employees. On occasion, however, a follow-on contractor will hire a new work force, and the predecessor's employees are displaced.
>
> As a buyer and participant in the marketplace, the Government is concerned about hardships to individuals that may result from the operation of our procurement system. Furthermore, the Government's procurement interests in economy and efficiency benefit from the fact that a carryover work force will minimize disruption to the delivery of services during any period of transition and provide the Government the benefits of an experienced and trained work force rather than one that may not be familiar with the Government facility.

In order to address these concerns, Section 1 of the Executive Order makes the following statement of policy:

> It is the policy of the Federal Government that solicitations and building service contracts for public buildings shall include a clause that requires the contractor under a contract that succeeds a contract for performance of similar services at the same public building to offer those employees (other than managerial or supervisory employees) under the predecessor contract whose employment will be terminated as a result of the award of the successor contract, a right of first refusal to employment under the contract in positions for which they are qualified. There shall be no employment openings under the contract until such right

of first refusal has been provided. Nothing in this order shall be construed to permit a contractor to fail to comply with any provision of any other Executive order or laws of the United States.

The Executive Order requires implementing regulations to be issued by the Secretary of Labor in consultation with the Federal Acquisition Regulatory Council, and that Department of Labor (DoL) regulations and the Federal Acquisition Regulation require inclusion of a contract clause in covered Federal solicitations and contracts. The Executive Order provides that it does not confer any right or benefit enforceable against the United States, but that it is not intended to preclude judicial review of final decisions by the Secretary of Labor in accordance with the Administrative Procedure Act (5 U.S.C. 701, *et seq.*).

To obtain public input and assist in the development of these regulations, the DoL invited comment through a notice of proposed rulemaking in the **Federal Register** on July 18, 1995 (60 FR 36756). The final DoL rule was published in the **Federal Register** on May 22, 1997 (62 FR 28175). This FAR interim rule implements the DoL rule.

Regarding certification requirements of this interim rule, the certification requirement in paragraph (e) of the clause at 52.222–50 is considered identical to the certification requirement in paragraph (n) of the clause at 52.222–41. Therefore, for the purposes of Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425), this rule does not impose a new certification requirement.

### B. Regulatory Flexibility Act

The General Services Administration, Department of Defense, and National Aeronautics and Space Administration certify that this interim rule will not have a significant economic impact on a substantial number of small entities because the Executive Order mandates a practice that is already followed in most cases. This rule implements the requirements of the Executive Order, as implemented by the DoL in its final rule of May 22, 1997 (62 FR 28175). The DoL certified that its final rule will not have a significant economic impact on a substantial number of small entities. In those cases where the practice was not followed before the Executive Order, the impact would be a result of the Executive Order and the DoL regulation; it would not be a result of the FAR implementation.

### C. Paperwork Reduction Act

This interim rule will not impose any additional paperwork burdens beyond the information collection and recordkeeping requirements required under sections 9.6(c), 9.9(b) and 9.11 of the Department of Labor Regulations, 29 CFR Part 9, and approved under DoL Office of Management and Budget Control No. 1215–0190.

### D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement Executive Order 12933 of October 20, 1994, Nondisplacement of Qualified Workers Under Certain Contracts, and the corresponding Department of Labor regulations that became effective on July 21, 1997. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

### List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: August 7, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Parts 22 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 22 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 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

2. Subpart 22.12, consisting of sections 22.1200 through 22.1208, is added to read as follows:

### Subpart 22.12—Nondisplacement of Qualified Workers Under Certain Contracts

Sec.

22.1200 Scope of subpart.
22.1201 Statement of policy.
22.1202 Definitions.
22.1203 Applicability.
22.1203–1 General.
22.1203–2 Exclusions.
22.1204 Seniority lists.
22.1205 Notice to employees.
22.1206 Complaint procedures.
22.1207 Withholding of contract payments.
22.1208 Contract clause.

### Subpart 22.12—Nondisplacement of Qualified Workers Under Certain Contracts

#### 22.1200 Scope of subpart.

This subpart prescribes policies and procedures for implementing Executive Order 12933 of October 20, 1994, Nondisplacement of Qualified Workers Under Certain Contracts, and Department of Labor regulations at 29 CFR part 9.

#### 22.1201 Statement of policy.

It is the policy of the Federal Government that contracts for building services at public buildings shall require the contractor under a successor contract for performance of similar services at the same public building, to offer those employees (other than managerial or supervisory employees) under the predecessor contract, whose employment will be terminated as a result of the award of the successor contract, a right of first refusal to employment under the contract in positions for which they are qualified. Executive Order 12933 states that there shall be no employment openings under the contract until such right of first refusal has been provided.

#### 22.1202 Definitions.

*Building service contract,* as used in this subpart, means a contract for recurring services related to the maintenance of a public building. Recurring services are services that are required to be performed regularly or periodically throughout the course of a contract, and throughout the course of the succeeding or follow-on contract(s), at one or more of the same public buildings. Executive Order 12933 lists examples of building service contracts as including, but not limited to, contracts for the recurring provision of custodial or janitorial services; window washing; laundry; food services; guard or other protective services; landscaping and groundskeeping services; and inspection, maintenance, and repair of fixed equipment such as elevators, air conditioning, and heating systems. Building service contracts do not include—

(1) Contracts that provide maintenance services only on a non-recurring or irregular basis. For example, a contract to provide servicing of fixed equipment once a year, or to mulch a garden on a one-time or annual basis, is a non-recurring maintenance contract that is not covered by this subpart;

(2) Contracts for day-care services in a Federal office building; or

(3) Concessions for sales of goods or services other than food services or laundry services.

*Public building,* as used in this subpart, means any building owned by the United States that is generally suitable for office or storage space or both for the use of one or more Federal agencies or mixed ownership corporations, its grounds, approaches, and appurtenances.

(1) Public buildings do not include any building on the public domain. The public domain includes only (i) those public lands owned by the United States and administered by the Department of the Interior, Bureau of Land Management, and (ii) the National Forest System administered by the Department of Agriculture, U.S. Forest Service. The public domain does not include Federal buildings, such as office buildings in cities or towns, that are occupied by the Bureau of Land Management or U.S. Forest Service where such buildings are not on lands administered by those agencies.

(2) Buildings on the following are not public buildings:

(i) Properties of the United States in foreign countries;

(ii) Native American and Native Eskimo properties held in trust by the United States;

(iii) Lands used in connection with Federal programs for agricultural, recreational, and conservation purposes, including research in connection therewith;

(iv) Lands used in connection with river, harbor, flood control, reclamation, or power projects; or for chemical manufacturing or development projects; or for nuclear production, research, or development projects;

(v) Land used in connection with housing and residential projects;

(vi) Properties of the United States Postal Service;

(vii) Military installations (including any fort, camp, post, naval training station, airfield, proving ground, military supply depot, military school, or any similar facility of the Department of Defense, but not including the Pentagon);

(viii) Installations of the National Aeronautics and Space Administration, except regular office buildings; and

(ix) Department of Veterans Affairs installations used for hospital or domiciliary purposes.

(3) Buildings leased to the Government are not public buildings unless the building is leased pursuant to a lease-purchase contract.

*Service employee,* as used in this subpart, means any person engaged in the performance of recurring building services other than a person in a *bona fide* executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541, and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor and such person.

**22.1203 Applicability.**

**22.1203–1 General.**

(a) This subpart applies to building service contracts where the contract is entered into by the Government in an amount equal to or greater than the simplified acquisition threshold and the contract succeeds a contract for similar work at one or more of the same public buildings.

(b)(1) Except as provided in paragraph (b)(2) of this subsection, a contract that includes a requirement for recurring building services is subject to this subpart even if the contract also contains other non-covered services or non-service requirements, such as construction or supplies, and even if the contract is not subject to the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351, *et seq.* However, the requirements of this subpart apply only to the building services portion of the contract, and only to those public buildings for which services were provided under a predecessor contract.

(2) This subpart does not apply to building services that are only incidental to a contract for another purpose, such as incidental maintenance under a contract to operate a day-care center. Building service requirements will not be considered incidental, and, therefore, will be subject to this subpart where (i) the contract contains specific requirements for a substantial amount of building services or it is ascertainable that a substantial amount of building services will be necessary to the performance of the contract (the word ''substantial'' relates to the type and quantity of building services to be performed and not merely to the total value of such work, whether in absolute dollars or cost percentages as compared to the total value of the contract); and (ii) the building services work is physically or functionally separate, and as a practical matter is capable of being performed on a segregated basis, from the other work called for by the contract. Building services performed on a building being leased to the Government pursuant to a lease-purchase contract are not covered unless the services are being performed under a contract directly with the Government.

**22.1203–2 Exclusions.**

(a) This subpart does not apply to—

(1) Contracts under the simplified acquisition threshold;

(2) Contracts for commodities or services produced or provided by the blind or severely handicapped, awarded pursuant to the Javits-Wagner-O'Day Act, 41 U.S.C. 46–48a, and any future enacted law creating an employment preference for some group of workers under building service contracts;

(3) Guard, elevator operator, messenger, or custodial services provided to the Government under contracts with sheltered workshops employing the severely handicapped as outlined in the Edgar Amendment, section 505 of the Treasury, Postal Services and General Government Appropriations Act, 1995, Public Law 103–329; or

(4) Agreements for vending facilities operated by the blind, entered into under the preference provisions of the Randolph-Sheppard Act, 20 U.S.C. 107.

(b) A successor contractor is not required to offer a right of first refusal for employment when a majority of its employees, who will perform the particular service under the contract, will work both at the public building and at other locations under contracts not subject to Executive Order 12933. Examples include, but are not limited to, pest control or trash removal services where the employees periodically visit various Government and non-Government sites, and make service calls to repair equipment at various Government and non-Government buildings. This exclusion does not apply (i) where the service employees' work on non-covered contracts is not performed as a part of the same job as their work on the Federal contract in question, or where they separately apply for work on the non-Federal contracts; or (ii) where the employees are deployed in a manner that is designed to avoid the purposes of Executive Order 12933. In making this determination, all the facts and circumstances are examined, including particularly the manner in which the predecessor contractor deployed its work force to perform the services, the manner in which the work force is typically deployed to perform such services, and the manner in which the contract is structured.

**22.1204 Seniority lists.**

(a) Not less than 60 days before completion of its contract, the predecessor contractor must furnish the contracting officer with a certified list of the names of all service employees engaged in the performance of building services, working for the contractor at the Federal facility at the time the list is submitted, together with their anniversary dates of employment. The

contracting officer in turn shall provide the list to the successor contractor and, if requested, to employees of the predecessor contractor or their representatives.

(b) The list provided pursuant to paragraph (a) of this section satisfies the requirements of paragraph (n) of the clause at 52.222–41, Service Contract Act of 1965, as Amended.

**22.1205 Notice to employees.**

(a) Where the successor contract is a contract subject to this subpart, the contracting officer will provide written notice to service employees of the predecessor contractor, who are engaged in building services, of their possible right to an offer of employment. Such notice either may be posted in a conspicuous place at the work site or may be delivered to the employees individually.

(b) Contracting officers may use either the following suggested notice format or another format with the same information.

Notice to Building Service Contract Employees

The contract for [*type of service*] services currently performed by [*predecessor contractor*] has been awarded to a new contractor. [*Successor contractor*] will begin performance on [*date successor contract begins*].

As a condition of the new contract [*successor contractor*] is required to offer employment to the employees of [*predecessor contractor*] working at [*the contract work site or work sites*] except in the following situations:

- Managerial or supervisory employees on the current contract are not entitled to an offer of employment.
- [*Successor contractor*] may reduce the size of the current work force. Therefore, only a portion of the existing work force may receive employment offers. However, [*successor contractor*] must offer employment to the employees of [*predecessor contractor*] if any vacancies occur in the first 3 months of the new contract.
- [*Successor contractor*] may employ a current employee on the new contract before offering employment to [*predecessor contractor's*] employees only if the current employee has worked for [*successor contractor*] for at least 3 months immediately preceding the commencement of the new contract and would face layoff or discharge if not employed under the new contract.
- Where [*successor contractor*] has reason to believe, based on credible information from a knowledgeable source, that an employee's performance has been unsuitable on the current contract, the employee is not entitled to employment with the new contractor.

If you are offered employment on the new contract, you will have at least 10 days to accept the offer.

If you are an employee of [*predecessor contractor*] and believe that you are entitled to an offer of employment with [*successor contractor*], but have not received an offer, you may file a complaint with [*contracting officer or representative*], the contracting officer handling this contract at: [*address and telephone number of contracting officer*]. If the contracting officer is unable to resolve your complaint, the contracting officer will forward a report to the U.S. Department of Labor, Wage and Hour Division. You also may file your complaint directly with [*address of the nearest District Office of the Wage and Hour Division*].

If you have any questions about your right to employment on the new contract, contact: [*Name, address, and telephone number of the contracting officer.*]

**22.1206 Complaint procedures.**

(a) Any employee of the predecessor contractor, who believes that he or she was not offered employment by the successor contractor as required by this subpart, may file a complaint with the contracting officer.

(b) Upon receipt of the complaint, the contracting officer shall provide information to the employee(s) and the successor contractor about their rights and responsibilities under this subpart. If the matter is not resolved through such actions, the contracting officer shall, within 30 days from receipt of the complaint, obtain statements of the positions of the parties and forward the complaint and statements, together with a summary of the issues and any relevant facts known to the contracting officer, to the nearest District Office of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, with copies to the contractor and the complaining employee.

(c) If the contracting officer has not forwarded the complaint to the Wage and Hour Division within 30 days of receipt of the complaint, as required by paragraph (b) of this section, the complainant may refile the complaint directly with the nearest District Office of the Wage and Hour Division.

**2.1207 Withholding of contract payments.**

(a) The Secretary of Labor has the authority to issue orders prescribing appropriate remedies, including, but not limited to, requiring employment of the predecessor contractor's employees and payment of wages lost.

(b) After an investigation and a determination by the Administrator, Wage and Hour Division, Department of Labor, that lost wages or other monetary relief is due, the Administrator may direct that so much of the accrued payments due on either the contract or any other contract between the contractor and the Government shall be withheld in a deposit fund as is necessary to pay the moneys due. Upon the final order of the Secretary of Labor that such moneys are due, the Administrator may direct that such withheld funds be transferred to the Department of Labor for disbursement.

(c) If the contracting officer or the Secretary of Labor finds that the predecessor contractor has failed to provide a list of the names of employees working under the contract in accordance with the requirements of the predecessor's contract, the contracting officer may take such action as may be necessary to cause the suspension of the payment of funds until such time as the list is provided to the contracting officer.

**22.1208 Contract clause.**

The contracting officer shall insert the clause at 52.222–50, Nondisplacement of Qualified Workers, in solicitations and contracts for building services that succeed contracts for performance of similar work at the same public building and that are not excluded by 22.1203.

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.222–50 is added to read as follows:

**52.222–50 Nondisplacement of Qualified Workers.**

As prescribed in 22.1208, insert the following clause:

Nondisplacement of Qualified Workers (Aug 1997)

(a) *Definition. Service employee,* as used in this clause, means any person engaged in the performance of recurring building services other than a person employed in a *bona fide* executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541, and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor and such person.

(b) Consistent with the efficient performance of this contract, the Contractor shall, except as otherwise provided herein, in good faith offer those employees engaged in the performance of building services (other than managerial and supervisory employees) under the predecessor contract, whose employment will be terminated as a result of award of this contract or the expiration of the contract under which the employees were hired, a right of first refusal to employment under the contract in positions for which the employees are qualified. The Contractor shall determine the number of employees necessary for efficient performance of this contract and may elect to employ fewer employees than the predecessor contractor employed in connection with performance of the work. Where the Contractor offers a right of first refusal to fewer employees than were employed by the predecessor contractor, its

obligation under the contract to the predecessor's employees to fill vacancies created by increased staffing levels or by employee termination, either voluntarily or for cause, continues for 3 months after commencement of the contract. Except as provided in paragraph (c) of this clause, the Contractor shall not offer employment under the contract to any person prior to having complied fully with this obligation.

(c) Notwithstanding the Contractor's obligation under paragraph (b) of this clause, the Contractor (1) may employ on the contract any employee who has worked for the Contractor for at least 3 months immediately preceding the commencement of this contract and who would otherwise face layoff or discharge, (2) is not required to offer a right of first refusal to any employee(s) of the predecessor contractor who are not service employees, and (3) is not required to offer a right of first refusal to any employee(s) of the predecessor contractor who the Contractor reasonably believes, based on the particular employee's past performance, has failed to perform suitably on the job. Examples of permissible sources for this determination include evidence of disciplinary action based on poor performance or evidence from the contracting agency that the particular employee did not perform suitably. Offers of employment are governed by the following:

(i) The offer shall state the time within which the employee must accept such offer, but in no case shall the period for acceptance be less than 10 days.

(ii) The offer may be made by separate written notice to each employee, or orally at a meeting attended by a group of the predecessor contractor's employees.

(iii) An offer need not be to a position similar to that which the employee previously held, but the employee must be qualified for the position.

(iv) An offer to a position providing lower pay or benefits than the employee held with the predecessor contractor will be considered *bona fide* if the Contractor shows valid business reasons.

(v) To ensure that an offer is effectively communicated, the Contractor should take reasonable efforts to make the offer in a language that each worker understands; for example, by having a co-worker or other person fluent in the worker's language at the meeting to translate or otherwise assist an employee who is not fluent in English.

(d) For a period of 1 year, the Contractor shall maintain copies of any written offers of employment or a contemporaneous written record of any oral offers of employment, including the date, location, and attendance roster of any employee meeting(s) at which the offers were extended, a summary of each meeting, a copy of any written notice that may have been distributed, and the names of the predecessor's employees to whom an offer was made. Copies of such documentation shall be provided upon request to any authorized representative of the contracting agency or the Department of Labor.

(e) The Contractor shall, no less than 60 days before completion of this contract, furnish the Contracting Officer with a certified list of the names of all service employees engaged in the performance of building services, working for the Contractor at the Federal facility at the time the list is submitted. The list also shall contain anniversary dates of employment on the contract either with the current or predecessor contractors of each service employee, as appropriate. The Contracting Officer will provide the list to the successor contractor, and the list shall be provided upon request to employees or their representatives. Submission of this list will satisfy the requirements of paragraph (n) of the clause at 52.222–41, Service Contract Act of 1965, as Amended.

(f) The requirements of this clause do not apply to services where a majority of the Contractor's employees performing the particular services under the contract work at the public building and at other locations under contracts not subject to Executive Order 12933, *provided* that the employees are not deployed in a manner that is designed to avoid the purposes of the Executive Order.

(g) If it is determined, pursuant to regulations issued by the Secretary of Labor, that the Contractor is not in compliance with the requirements of this clause or any regulation or order of the Secretary, appropriate sanctions may be imposed and remedies invoked against the Contractor, as provided in Executive Order 12933, the regulations of the Secretary of Labor at 29 CFR part 9, and relevant orders of the Secretary of Labor, or as otherwise provided by law.

(h) The Contractor is advised that the Contracting Officer shall withhold or cause to be withheld from the Contractor, under this or any other Government contract with the Contractor, such sums as an authorized official of the Department of Labor requests, upon a determination by the Administrator of the Wage and Hour Division, the Administrative Law Judge, or the Administrative Review Board, that the Contractor failed to comply with the terms of this clause, and that wages lost as a result of the violations are due to employees or that other monetary relief is appropriate.

(i) The Contractor shall cooperate in any investigation by the contracting agency or the Department of Labor into possible violations of the provisions of this clause and shall make records requested by such official(s) available for inspection, copying, or transcription upon request.

(j) Disputes concerning the requirements of this clause shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with applicable law and the procedures of the Department of Labor set forth in 29 CFR part 9. Disputes concerning the requirements of this clause include disputes between or among any of the following: The Contractor, the contracting agency, the U.S. Department of Labor, and the employees under the contract or its predecessor contract.

(End of clause)

[FR Doc. 97–21497 Filed 8–21–97; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Part 25

**[FAC 97–01; FAR Case 97–019; Item XIII]**

**RIN 9000–AH68**

## Federal Acquisition Regulation; Designation of Hong Kong

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to add Hong Kong as a designated country under the Trade Agreements Act of 1979, as directed by the United States Trade Representative. 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.

**DATE:** *Effective* August 22, 1997.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAC 97–01, FAR case 97–019.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This final rule amends FAR 25.401 to add Hong Kong as a designated country under the Trade Agreements Act of 1979, as directed by the United States Trade Representative. The accession of Hong Kong to the World Trade Organization Agreement on Government Procurement became effective on June 19, 1997.

### B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in

accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 97–01, FAR case 97–019), in correspondence.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 25

Government procurement.

Dated: August 7, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Part 25 is amended as set forth below:

## PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR Part 25 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).

**25.401 [Amended]**

2. Section 25.401 is amended in the definition of ''Designated country'' by adding, in alphabetical order, ''Hong Kong''.

[FR Doc. 97–21498 Filed 8–21–97; 8:45 am]

BILLING CODE 6820–EP–P

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Part 31

**[FAC 97–01; FAR Case 96–012; Item XIV]**

**RIN 9000–AH43**

## Federal Acquisition Regulation; Foreign Differential Pay

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule adopted as final.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to convert the interim rule published as Item VI of Federal Acquisition Circular 90–44 on December 31, 1996, to a final rule without change. The rule amends the Federal Acquisition Regulation (FAR) to remove the prohibition on the calculation of foreign differential pay based directly on an employee's specific increase in income taxes resulting from assignment overseas. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

**DATE:** *Effective* October 21, 1997.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, Procurement Analyst, at (202) 501–3221. Please cite FAC 97–01, FAR case 96–012.

**SUPPLEMENTARY INFORMATION:**

### A. Background

An interim rule was published on December 31, 1996 (61 FR 69294). The interim rule revised the cost principle at FAR 31.205–6, Compensation for personal services, to permit contractors to calculate any increased compensation for foreign overseas differential pay on the basis of an employee's specific increase in taxes resulting from foreign assignment. The interim rule is converted to a final rule with no change.

Public comments were received from one source. The comments were considered in developing the final rule.

### B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive fixed-price basis and do not require application of the cost principle contained in this rule.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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.

### Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Part 31 which was published at 61 FR 69294, December 31, 1996, is adopted as a final rule without change.

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Dated: August 7, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

[FR Doc. 97–21499 Filed 8–21–97; 8:45 am]

BILLING CODE 6820–EP–P

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Part 31

**[FAC 97–01; FAR Case 96–003; Item XV]**

**RIN 9000–AH35**

## Federal Acquisition Regulation; Local Government Lobbying Costs

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule adopted as final.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to convert the interim rule published as Item XI of Federal Acquisition Circular 90–43 on December 20, 1996, to a final rule without change. The rule amends the Federal Acquisition Regulation (FAR) to make allowable the costs of any lobbying activities to influence local legislation in order to directly reduce contract cost, or to avoid material impairment of the contractor's authority to perform the contract. 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:** Effective October 21, 1997.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms.

Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–01, FAR case 96–003.

**SUPPLEMENTARY INFORMATION:**

### A. Background

An interim rule was published on December 20, 1996 (61 FR 67424). The interim rule revised the cost principle at FAR 31.205–22, Lobbying and political activity costs, to provide an additional exemption from the provisions which make lobbying costs unallowable. This exemption makes allowable the costs of any lobbying activities to influence local legislation in order to directly reduce contract cost, or to avoid material impairment of the contractor's authority to perform the contract. The interim rule is converted to a final rule without change.

Public comments were received from one source. The comments were considered in developing the final rule.

### B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive fixed-price basis, and do not require application of the cost principle contained in this rule.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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.

### Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Part 31, which was published at 61 FR 67424, December 20, 1996, is hereby adopted as final without change.

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Dated: August 7, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

[FR Doc. 97–21500 Filed 8–21–97; 8:45 am]

BILLING CODE 6820–EP–U

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Part 36

**[FAC 97–01; FAR Case 97–005; Item XVI]**

**RIN 9000–AH63**

## Federal Acquisition Regulation; Independent Government Estimates-Construction

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to increase the threshold for a mandatory independent Government estimate of construction costs and architect-engineer costs from $25,000 to $100,000. 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:** Effective October 21, 1997.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501–3856. Please cite FAC 97–01, FAR case 97–005.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This final rule amends FAR 36.203(a) and 36.605(a) to raise the threshold for a mandatory independent Government estimate of construction costs and architect-engineer costs from $25,000 to $100,000. The benefits of an independent Government estimate do not warrant the high cost of such effort to cover the small risk associated with modifications under $100,000. The change will reduce costs and streamline the acquisition procedures, permitting improved utilization of resources.

### B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 97–01, FAR case 97–005), in correspondence.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 36

Government procurement.

Dated: August 7, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Part 36 is amended as set forth below:

## PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

1. The authority citation for 48 CFR Part 36 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).

**36.203 [Amended]**

2. Section 36.203 is amended in paragraph (a) by removing ''$25,000'' and inserting ''$100,000'' in its place each time it appears.

**36.605 [Amended]**

3. Section 36.605 is amended in paragraph (a) by removing ''$25,000'' and inserting ''$100,000'' in its place.

[FR Doc. 97–21501 Filed 8–21–97; 8:45 am]

BILLING CODE 6820–EP–U

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Parts 39 and 52

**[FAC 97–01; FAR Case 96–607; Item XVII]**

**RIN 9000–AG90**

## Federal Acquisition Regulation; Year 2000 Compliance

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule adopted as final with changes.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with changes, the interim rule published as Item XIV of Federal Acquisition Circular 90–45. The rule amends the Federal Acquisition Regulation (FAR) to increase awareness of Year 2000 procurement issues and to ensure that solicitations and contracts address Year 2000 issues. 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:** Effective October 21, 1997.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202), 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–01, FAR case 96–607.

**SUPPLEMENTARY INFORMATION:**

### A. Background

An interim rule was published on January 2, 1997 (61 FR 273). The interim rule is converted to a final rule with revisions. Revisions were made to the definition, ''Year 2000 compliant'', at FAR 39.002 to better convey the intent of the definition.

Twenty comments from five respondents were received during the public comment period. All comments were considered in the development of the final rule.

The final rule will provide needed coverage to ensure that information technology products to be acquired and used by Federal agencies after December 31, 1999, will be able to process date related data into the next century. Solicitations and contracts should require Year 2000 compliant technology, or require that non-compliant information technology be upgraded to be compliant in a timely manner. The rule also recommends that agency solicitations describe existing information technology that will be used with the information technology to be acquired and identify whether the existing information technology is Year 2000 compliant. If proper date/time data is provided, the Year 2000 compliant information technology must be able to process the data accurately. If it cannot process proper date/time data accurately, its failure will not be excused because of the noncompliance of another information technology product. Agencies are expected to test for Year 2000 compliance. However, lack of testing does not excuse failure of the information technology to be Year 2000 compliant.

### B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule merely provides internal Government guidance regarding the development of contract requirements for the acquisition of information technology.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 39 and 52

Government procurement.

Dated: August 7, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

### Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Parts 39 and 52, which was published at 61 FR 273, January 2, 1997, is hereby adopted as final with the following change:

## PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

1. The authority citation for 48 CFR Part 39 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 39.002 is amended by revising the definition of ''Year 2000 compliant'' to read as follows:

**39.002 Definitions.**

* * * * *

*Year 2000 compliant*, as used in this part, means, with respect to information technology, that the information technology accurately processes date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date/time data with it.

[FR Doc. 97–21502 Filed 8–21–97; 8:45 am]

BILLING CODE 6820–EP–U

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Part 43

**[FAC 97–01; FAR Case 96–606; Item XVIII]**

**RIN 9000–AH44**

## Federal Acquisition Regulation; Modification of Existing Contracts Under FASA and FARA

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule adopted as final.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, the interim rule published as Item VIII of Federal Acquisition Circular 90–44 on December 31, 1996. The rule amends the Federal Acquisition Regulation (FAR) to implement subsection 10002(e) of the Federal Acquisition Streamlining Act of 1994 and subsections 4402 (d) and (e) of the Clinger-Cohen Act of 1996. The rule authorizes, but does not require, contracting officers, if requested by the contractor, to modify existing

contracts without requiring consideration to incorporate changes authorized by the Acts. 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:** Effective October 21, 1997.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAC 97–01, FAR case 96–606.

**SUPPLEMENTARY INFORMATION:**

## A. Background

Subsection 10002(e) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355) (FASA) and subsection 4402(d) of the Clinger-Cohen Act of 1996 (Public Law 104–106) (Clinger-Cohen) allow regulations implementing the Acts to provide for modification of an existing contract without consideration upon the request of the contractor. Subsection 10002(e) of FASA and subsection 4402(e) of Clinger-Cohen provide that, except as specifically provided in these Acts, nothing in the Acts shall be construed to require the renegotiation or modification of contracts in existence on the date of the enactment of the Acts. The rule adopts the policy of encouraging, but not requiring, appropriate modifications without consideration, upon the request of the contractor. If the contracting officer determines that modification of an existing contract is appropriate to incorporate changes authorized by these Acts, the modification should insert the current version of the applicable FAR clauses into the contract.

No comments were received in response to the FASA interim rule published in the **Federal Register** at 61 FR 18915, April 29, 1996, and the Clinger-Cohen interim rule published in the **Federal Register** at 61 FR 69297, December 31, 1996.

## B. Regulatory Flexibility Act

The final rule may 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 it enables industry and the Government to gain significant benefits, including the potential reduction of contract costs, by authorizing the incorporation into existing contracts any of the Federal Acquisition Streamlining Act and/or Clinger-Cohen Act changes that will benefit the contracting parties. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. The FRFA is summarized as follows:

There were no public comments received in response to the Initial Regulatory Flexibility Analysis. The rule will apply to all large and small entities that currently have a Government contract. Most likely, contractors will not request modification of contracts under $25,000, because the usually short period of performance under these contracts will discourage modification. The number of active contracts over $25,000 held by small entities at any point in time or the total in any one fiscal year is not readily available from the *Federal Procurement Report, Fiscal Year 1996 through Fourth Quarter.* However, in fiscal year 1996, small entities were awarded approximately 37,192 contracts over $25,000. The number of contract modifications requested by small entities to incorporate Federal Acquisition Streamlining Act and/or the Clinger-Cohen Act changes depends on whether they determine that modifications to their specific contracts will be advantageous. The rule imposes no new reporting, recordkeeping, or other compliance requirements. This rule is the only practical alternative to implement subsection 10002(e) of the Federal Acquisition Streamlining Act and subsections 4402 (d) and (e) of the Clinger-Cohen Act.

## C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 43

Government procurement.

## Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Part 43, which was published at 61 FR 69297, December 31, 1996, is hereby adopted as final without change.

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Dated: August 14, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

[FR Doc. 97–22075 Filed 8–21–97; 8:45 am]

BILLING CODE 6820–EP–U

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Chapter I

## Federal Acquisition Regulation; Small Entity Compliance Guide

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Small Entity Compliance Guide.

**SUMMARY:** This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration as the Federal Acquisition Regulation (FAR) Council. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 97–01 which amend the FAR. The rules marked with an asterisk (*) are those for which a final regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Further information regarding these rules may be obtained by referring to FAC 97–01 which precedes this notice. This document may be obtained from the Internet.

**FOR FURTHER INFORMATION CONTACT:** Beverly Fayson, FAR Secretariat, (202) 501–4755.

LIST OF RULES IN FAC 97–01

| Item | Subject | FAR case | Analyst |
|---|---|---|---|
| I | Business Process Innovation | 97–006 | De Stefano. |
| II | FASA and the Walsh-Healey Public Contracts Act | 96–601 | O'Neill. |

LIST OF RULES IN FAC 97–01—Continued

| Item | Subject | FAR case | Analyst |
|---|---|---|---|
| III | * Irrevocable Letters of Credit and Alternatives to Miller Act Bonds | 95–301 | O'Neill. |
| IV | Automatic Data Processing Equipment Leasing Costs | 96–010 | Olson. |
| V | * Environmentally Sound Products | 92–054A | De Stefano. |
| VI | New FAR Certifications | 96–329 | De Stefano. |
| VII | * Service Contracting | 95–311 | O'Neill. |
| VIII | ADP/Telecommunications Federal Supply Schedules | 96–602 | Nelson. |
| IX | Certificate of Competency (Interim) | 96–002 | Moss. |
| X | Economically Disadvantaged Individuals | 97–008 | Moss. |
| XI | Minority Small Business and Capital Ownership | 95–028 | Moss. |
| XII | Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts (Interim). | 94–610 | O'Neill. |
| XIII | Designation of Hong Kong | 97–019 | Linfield. |
| XIV | Foreign Differential Pay | 96–012 | Olson. |
| XV | Local Government Lobbying Costs | 96–003 | Nelson. |
| XVI | Independent Government Estimates—Construction | 97–005 | O'Neill. |
| XVII | Year 2000 Compliance | 96–607 | Nelson. |
| XVIII | * Modification of Existing Contracts under FASA and FARA | 96–606 | De Stefano. |

**Item I—Business Process Innovation (FAR Case 97–006)**

This final rule amends FAR 1.102–4(e) to encourage contracting officers, in their role as members of the Government acquisition team, to take the lead in encouraging business process innovations and ensuring that business decisions are sound.

**Item II—FASA and the Walsh-Healey Public Contracts Act (FAR Case 96–601)**

The interim rule published as Item I of Federal Acquisition Circular 90–43 is converted to a final rule without change. The rule amends the FAR to eliminate the requirement that covered contractors under the Walsh-Healey Public Contracts Act must be either the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract.

**Item III—Irrevocable Letters of Credit and Alternatives to Miller Act Bonds (FAR Case 95–301)**

The interim rule published as Item XVII of FAC 90–39 is revised and finalized. The rule amends FAR Parts 28 and 52 to provide for use of Irrevocable Letters of Credit as substitutes for corporate or individual surety on Miller Act bonds, and to provide alternatives to Miller Act payment bonds for construction contracts valued at $25,000 to $100,000, which are no longer subject to the Miller Act, in accordance with Section 4104(b)(1) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355).

**Item IV—Automatic Data Processing Equipment Leasing Costs (FAR Case 96–010)**

The interim rule published as Item I of FAC 90–44 is converted to a final rule without change. The rule amends FAR Part 31 to remove the automatic data processing equipment leasing cost principle.

**Item V—Environmentally Sound Products (FAR Case 92–054A)**

The interim rule published as Item II of FAC 90–27 is revised and finalized. The rule amends FAR Parts 1, 7, 10, 11, 13, 15, 23, 36, 42, and 52 to incorporate policies for the acquisition of environmentally preferable and energy-efficient products and services. The final rule differs from the interim rule in that it clarifies the acceptability of used, reconditioned, or remanufactured supplies, or former Government surplus property, proposed for use under a contract; revises the clause at 52.211–5 regarding acceptability of such material and limits its use in solicitations and contracts for commercial items; eliminates the provisions at 52.211–6 and 52.223–8 and the clause at 52.211–7; revises the clause at 52.223–9 to streamline reporting requirements regarding the recovered material content of EPA-designated items; and eliminates references to agency designation of items requiring minimum recovered material content.

**Item VI—New FAR Certifications (FAR Case 96–329)**

This final rule adds a new section at FAR 1.107 to reflect the provisions of Section 4301(b)(2) of the Clinger-Cohen Act of 1996 (Pub. L. 104–106). Section 4301(b)(2) prohibits the inclusion of a new certification requirement in the FAR for contractors or offerors unless the certification requirement is specifically imposed by statute, or unless a written justification for such certification requirement is provided to the Administrator for Federal Procurement Policy by the FAR Council and the Administrator approves in writing the inclusion of the certification.

**Item VII—Service Contracting (FAR Case 95–311)**

This final rule amends FAR Parts 7, 16, 37, 42, 46, and 52 to implement Office of Federal Procurement Policy (OFPP) Policy Letter 91–2, Service Contracting. The OFPP policy letter prescribes policies and procedures for use of performance-based contracting methods.

**Item VIII—ADP/Telecommunications Federal Supply Schedules (FAR Case 96–602)**

This final rule amends FAR Subpart 8.4 to clarify procedures for placing orders and obtaining price reductions under GSA Federal supply schedule contracts, and to add information regarding the ''GSA Advantage!'' on-line shopping service. Related amendments are made at FAR 13.202(a)(4) and 51.103.

**Item IX—Certificate of Competency (FAR Case 96–002)**

This interim rule amends FAR Parts 9 and 19 to implement revisions made to the Small Business Administration's (SBA) procurement assistance programs contained in 13 CFR Part 125. The rule notably (1) increases the threshold over which contracting officers may appeal the award of a Certificate of Competency (COC) from $25,000 to $100,000; (2) updates the names of SBA offices involved in processing COC's; and (3) implements the requirement that compliance with the limitations on subcontracting be considered an element of responsibility. In addition, this interim rule removes language implementing Section 15(c) of the Small

Business Act (15 U.S.C. 644(c)) as amended by Section 305 of Pub. L. 103–403, Small Business Administration Reauthorization and Amendments Act of 1994. Section 305, which authorized public and private organizations for the handicapped to participate in acquisitions set aside for small businesses, has expired.

**Item X—Economically Disadvantaged Individuals (FAR Case 97–008)**

This final rule amends the definition of ''small disadvantaged business concern'' at FAR 19.001 to update the categories of individuals considered to be socially and economically disadvantaged. In accordance with the Small Business Administration's regulations at 13 CFR 124.105, the Maldives Islands has been added to the category of ''Subcontinent Asian Americans''; and Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, and Nauru have been added to the category of ''Asian Pacific Americans.''

**Item XI—Minority Small Business and Capital Ownership (FAR Case 95–028)**

The interim rule published as Item VII of FAC 90–43 is revised and finalized. The rule amends the FAR to reflect changes to the Small Business Administration's (SBA) regulations at 13 CFR Parts 121 and 124, which address the Minority Small Business and Capital Ownership Development Program. The rule clarifies eligibility and procedural requirements for procurements under the 8(a) program. The final rule differs from the interim rule in that it amends FAR 19.804–2 to reflect changes that the SBA is making in its processing of 8(a) requirements.

**Item XII—Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts (FAR Case 94–610)**

This interim rule adds a new FAR Subpart 22.12 implementing Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts, of October 20, 1994. The Executive Order and the interim rule require that workers on certain building service contracts be given the right of first refusal for employment with the successor contractor, if they would otherwise lose their jobs as a result of the award of the successor contract.

**Item XIII—Designation of Hong Kong (FAR Case 97–019)**

This final rule amends FAR 25.401 to add Hong Kong as a designated country under the Trade Agreements Act of 1979, as directed by the United States Trade Representative.

**Item XIV—Foreign Differential Pay (FAR Case 96–012)**

The interim rule published as Item VI of FAC 90–44 is converted to a final rule without change. The rule amends FAR 31.205–6 to remove the prohibition on the calculation of foreign differential pay based directly on an employee's specific increase in income taxes resulting from assignment overseas.

**Item XV—Local Government Lobbying Costs (FAR Case 96–003)**

The interim rule published as Item XI of FAC 90–43 is converted to a final rule without change. The rule amends FAR 31.205–22 to make allowable the costs of any lobbying activities to influence local legislation in order to directly reduce contract costs, or to avoid material impairment of the contractor's authority to perform the contract.

**Item XVI—Independent Government Estimates—Construction (FAR Case 97–005)**

This final rule amends FAR 36.203(a) and 36.605(a) to raise the threshold for a mandatory independent Government estimate of construction costs and architect-engineer costs from $25,000 to $100,000.

**Item XVII—Year 2000 Compliance (FAR Case 96–607)**

The interim rule published as Item XIV of FAC 90–45 is revised and finalized. The rule provides guidance regarding the acquisition of information technology that is Year 2000 compliant. The final rule differs from the interim rule in that it makes clarifying revisions to the definition of ''Year 2000 compliant'' at FAR 39.002.

**Item XVIII—Modification of Existing Contracts Under FASA and FARA (FAR Case 96–606)**

The interim rule published as Item VIII of FAC 90–44 is converted to a final rule without change. The rule amends FAR 43.102 to implement subsection 10002(e) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355) and subsections 4402 (d) and (e) of the Clinger-Cohen Act of 1996 (Pub. L. 104–106). The rule authorizes, but does not require, contracting officers, if requested by the contractor, to modify existing contracts without requiring consideration, to incorporate changes authorized by the Act.

Dated: August 14, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

[FR Doc. 97–22076 Filed 8–21–97; 8:45 am]

BILLING CODE 6820–EP–P

federal register

Friday
August 22, 1997

# Part IV

# Department of Justice

## Bureau of Prisons

## 28 CFR Part 548

## Religious Beliefs and Practices; Final Rule

## DEPARTMENT OF JUSTICE

### Bureau of Prisons

### 28 CFR Part 548

**[BOP 1011–F]**

**RIN 1120–AA17**

## Religious Beliefs and Practices

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Final rule with request for comments.

**SUMMARY:** In this document, the Bureau of Prisons is finalizing its interim rule on religious beliefs and practices and is requesting comment on a further revision regarding procedures for requesting religious activities. This is intended to provide the inmate with reasonable and equitable opportunity to pursue religious beliefs and practices.

**DATES:** This final rule is effective August 22, 1997; comments on § 548.12 due by October 21, 1997.

**ADDRESSES:** Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons is finalizing its interim rule on religious beliefs and practices which was published in the **Federal Register** on September 6, 1995 (60 FR 46486). No comments were received on the interim rule, and, except as noted below, the Bureau is therefore adopting the interim regulation as final. In adopting the rule as final, the Bureau is making an editorial change (adding a serial comma in the first sentence) in § 548.16(c) and is making an administrative change (removing from the regulation details on how staff document requests for religious diets) in § 548.20(a) and a grammatical correction in § 548.20(b). In addition, the Bureau is further revising and accepting comment on § 548.12. Section 548.12 describes the duties of an institution chaplain. It is being revised to note that institution chaplains are responsible for managing religious activities within the institution and to indicate that the chaplain may ask the requesting inmate to provide information regarding specific religious practices for the purpose of making an informed decision regarding the request.

The Bureau believes that requesting information regarding specific religious practices is reasonable particularly when the request may involve a new or unusual practice for which there is little available written documentation. While the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and delay in effective date for the change to § 548.12, the Bureau is implementing this change with a request for further comment on this point. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered before § 548.12 is finalized.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), does not have a significant economic impact on a substantial number of small entities, within the meaning of the Act. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

### List of Subjects in 28 CFR Part 548

Prisoners.

**Kathleen M. Hawk,**

*Director, Bureau of Prisons.*

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), the interim rule published September 6, 1995 (60 FR 46486) is adopted as final with the following changes.

**SUBCHAPTER C—INSTITUTIONAL MANAGEMENT**

## PART 548—RELIGIOUS PROGRAMS

1. The authority citation for 28 CFR part 548 continues to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 42 U.S.C. 1996; 28 CFR 0.95–0.99.

2. Section 548.12 is revised to read as follows:

### § 548.12 Chaplains.

Institution chaplains are responsible for managing religious activities within the institution. Institution chaplains are available upon request to provide pastoral care and counseling to inmates through group programs and individual services. Pastoral care and counseling from representatives in the community are available in accordance with the provisions of §§ 548.14 and 548.19. The chaplain may ask the requesting inmate to provide information regarding specific requested religious activities for the purpose of making an informed decision regarding the request.

3. In § 548.16, paragraph (c) is amended by revising the first sentence to read as follows:

### § 548.16 Inmate religious property.

* * * * *

(c) An inmate who wishes to have religious books, magazines or periodicals must comply with the general rules of the institution regarding ordering, purchasing, retaining, and accumulating personal property. * * *

### § 548.20 [Amended]

4. In § 548.20, paragraph (a) is amended by removing the last sentence and paragraph (b) is amended by revising the phrase ''agreed to'' in the second sentence as ''agreed''.

[FR Doc. 97–22290 Filed 8–21–97; 8:45 am]

BILLING CODE 4410–05–P

federal register

Friday
August 22, 1997

# Part V

# Department of Housing and Urban Development

## 24 CFR Part 92

## Home Investment Partnerships Program; Additional Streamlining; Final Rule

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 92**

**[Docket No. FR–4111–F–02]**

**RIN 2501–AC30**

## Home Investment Partnerships Program—Additional Streamlining

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule; request for comment.

**SUMMARY:** This rule implements the proposed rule published December 11, 1996 and amends the existing Home Program final rule by: replacing the hearing procedures of the current Home rule with the Department-wide streamlined hearing procedures; removing the closeout requirements and instead providing that Home funds will be closed out in accordance with procedures established by HUD; replacing the extensive requirements for the competitive reallocation of Home funds with a citation to the selection factors in the Home statute and a statement of the maximum number of points that may be awarded for each factor; and establishing separate market interest rate formula for rehabilitation loans. This rule also promulgates an amendment to, and requests public comment on, § 92.252(i)(2) to limit the rents charged to tenants of Home-assisted units whose income rises above 80 percent of area median income in Home projects in which the Home-assisted units ''float.''

**DATES:** Effective Date: September 22, 1997.

Comment Due Date: Comments on § 92.252(i)(2) are due on October 21, 1997.

**ADDRESSES:** Interested persons are invited to submit comments regarding § 92.252(i)(2) to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Faxed comments will not be accepted.

**FOR FURTHER INFORMATION CONTACT:** Mary Kolesar, Director, Program Policy Division, Office of Affordable Housing Programs, Room 7162, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–2470 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

**SUPPLEMENTARY INFORMATION:**

### I. Statutory and Regulatory Background

The Home Investment Partnerships Act (the HOME Act) (Title II of the Cranston-Gonzalez National Affordable Housing Act) was signed into law on November 28, 1990 (Pub. L. 101–625), and created the Home Investment Partnerships Program that provides funds to expand the supply of affordable housing for very low-income and low-income persons. Interim regulations for the Home Investment Partnerships Program were first published on December 16, 1991 (56 FR 65313) and are codified at 24 CFR part 92.

The original statute has been amended three times since enactment. The Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992) included a substantial number of amendments to the Home Program. These amendments were implemented in rules published on December 22, 1992 (57 FR 60960), June 23, 1993 (58 FR 34130), and April 19, 1994 (59 FR 18626). The HUD Demonstration Act (Pub. L. 103–120, approved October 27, 1993) provided additional authorization for Home Program technical assistance. The Multifamily Housing Property Disposition Reform Act of 1994 (MHPDRA) (Pub. L. 103–233, approved April 11, 1994) included an additional number of amendments to the Home Program. These amendments were implemented in a rule published on August 26, 1994 (59 FR 44258).

A proposed rule (60 FR 36012) to modify the Home allocation formula and an interim rule (60 FR 36020) with clarifying changes to the Home regulation and a request for additional comments before the issuance of a final rule were published on July 12, 1995. The proposed rule was issued as an interim rule on January 23, 1996 (61 FR 1824). On March 6, 1996 (61 FR 9036), an interim rule that made a number of streamlining amendments to the Home regulation was published. On September 16, 1996 (61 FR 48736), the Department published a final rule for the Home Investment Partnerships Program (the Home program). Finally, a proposed rule to make a number of additional streamlining changes was published on December 11, 1996 (61 FR 65298). This rule implements the changes proposed in the December 11, 1996 rule. This rule also implements, and solicits public comment on, an amendment to § 92.252(i)(2) that would provide relief, in circumstances explained below in this preamble, from the requirement that tenants who no longer qualify as low-income pay 30 percent of their adjusted income as rent.

The purpose of this rule is two-fold: (1) To respond to a memorandum that President Clinton issued to all Federal departments and agencies regarding regulatory reinvention; and (2) to provide additional flexibility to Home participating jurisdictions by more accurately measuring the match value of below-market interest rate rehabilitation loans.

In response to the President's memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which could be eliminated, consolidated, or otherwise improved. HUD determined that the regulations for the Home Investment Partnerships Program would be improved and streamlined by eliminating unnecessary provisions.

For the first streamlining change, HUD replaces the requirements for the competitive reallocation of Home funds in § 92.453, which largely repeat the Home statute at section 217(c) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(c)), with a citation to the selection criteria in the statute; the maximum number of points that may be awarded for each category of criteria (policies, actions, commitment), as was done in the regulation; and a statement that such requirements will be published in a Notice of Funding Availability (NOFA) in accordance with the requirements of the HUD Reform Act as funds become available.

Second, this rule removes the closeout requirements specified in § 92.507 and instead provides that, ''Home funds will be closed out in accordance with procedures established by HUD.''

Third and last of the streamlining changes, this rule replaces the hearing procedures in § 92.552 of the current HOME rule with the Department-wide, streamlined, hearing procedures of 24 CFR part 26 published as a final rule on September 24, 1996 (61 FR 50208).

The changes described above are consistent with the general reinvention goals of streamlining the requirements of HUD's funding programs and maximizing their administrative flexibility. For example, removing the current rigid and burdensome closeout requirements permits the Department to simplify the closeout process and administer it on the basis of the reports and other monitoring information it receives. In addition, every recipient of

HUD funding and the Department itself will benefit from the adoption of uniform hearings procedures that apply to all HUD programs.

This rule also establishes a separate formula for calculating the match value of below-market interest rate rehabilitation loans for both owner-occupied and rental housing. This change to the Home program responds to comments that this methodology, which involves calculating the yield foregone based upon the difference between the actual interest rate charged and the market interest rate established at § 92.220(a)(1)(iii)(B), understated the actual value of these contributions. Because the formula for determining the market interest rate for various types of projects was based on assumptions involving first mortgage financing, participating jurisdictions claimed that the methodology understated the match value of below-market interest rate rehabilitation loans, which typically carry higher market interest rates than first mortgage financing for comparable projects.

Finally, this rule amends § 92.252(i)(2) to address, to the extent permissible, an unintended inequity that may arise with respect to the rent for a Home-assisted unit. This section is amended to limit the rents charged to tenants of Home-assisted units whose income rises above 80 percent of area median income in Home projects in which the Home-assisted units ''float.'' The Home statute requires that the tenants of Home-assisted units who no longer qualify as low-income pay 30 percent of their adjusted income as rent, except that tenants of units assisted with both Home funds and Low-Income Housing Tax Credits (LIHTC) are subject to the rules of the LIHTC program. The Department has determined that there is legal precedent that enables it, in projects with floating Home units, to limit the rent charged to over-income tenants in Home-assisted units to the market rent for comparable units in the neighborhood. This precedent does not apply to rents in projects where Home units are fixed. Thus, extending this rent limitation provision to such units was not an option available to HUD.

In Home projects in which the Home-assisted units are fixed, the requirement that the over-income tenant pay 30 percent of adjusted income as rent may provide that tenant with an incentive to move because the Home rent might eventually exceed the market rent on an unassisted unit. In such instances, the Home project could be brought back into compliance with the requirements of § 92.252 (a) and (b) more quickly because the over-income tenant is likely to move from the Home-assisted unit. However, in projects where the Home units are designated as floating and a tenant's income rises above 80% of area median income, the next available, comparable unit can be designated as a Home-assisted unit. In these instances, the project can be brought back into compliance without the over-income tenant moving to avoid paying an excessive rent. Recognizing that individual tenants may have reasons for remaining in Home-assisted units even at a higher rent (e.g., proximity to work or schools, the cost of moving, or unavailability of unassisted units in the neighborhood), the Department is exercising the flexibility afforded by legal precedent to limit the rents for over-income tenants in floating Home units. In projects receiving both Home and LIHTC, the rent requirements of the tax credit program will continue to supersede Home rental requirements.

## II. Summary of Comments and Responses

The Department received four comments on the proposed rule published December 11, 1996. Two comments were received from a State Home participating jurisdiction. Two comments were received from public interest groups representing public agencies administering the Home Program.

*Streamlining Provisions*

One commenter, a public interest group, supported the three proposed changes to streamline the program regulations. The commenter suggested that HUD seek the input of Home program administrators in developing requirements for Home grant closeouts.

*Matching Requirements*

All four commenters supported HUD's proposal to establish a separate market interest rate formula for determining the match value of below-market interest rate rehabilitation loans made to single-family and multifamily housing, whether owner-occupied or rental. One commenter recommended that each participating jurisdiction be permitted to establish the market rate for rehabilitation loans made in its jurisdiction by conducting weekly surveys of lenders in its area to determine the rates being offered for rehabilitation loans. Two commenters preferred that the Department use the same methodology for determining the match value of below-market interest rate rehabilitation loans as it did for acquisition loans, establishing a rate based on the interest rate for a 10-year Treasury note plus a specified number of basis points. One of the commenters recommended that the market rate be equal to the interest rate for a 10-year Treasury note plus 400 basis points. The other commenter recommended that 200 basis points be added to each of the three existing market interest rates for single-family fixed financing (200 basis points), single-family adjustable rate financing (250 basis points), and multifamily financing (300 basis points).

One commenter suggested that HUD establish separate market rates for single-family homeownership and multifamily rental loans made for rehabilitation. Another commenter recommended that the formula established by HUD be as simple as possible.

The Department agrees that the methodology for calculating the value of rehabilitation loans should be simple and has adopted the suggestion that the market interest rate for these loans be set at a rate equal to the interest rate on a 10-year note plus 400 basis points. In the interest of simplicity, this single rate shall apply to rehabilitation loans made to housing of all types and tenures. This standard should provide for a generous valuation of match contributions in most participating jurisdictions, is consistent with the methodology for other types of loans, is simple to calculate, and avoids the additional burden and recordkeeping that would be necessary if each participating jurisdiction were to conduct periodic surveys of lenders.

## Findings and Certifications

*Justification for Implementation of § 92.252(i)(2)*

The Department has determined that the amendment made by this rule to § 92.252(i)(2) should be adopted without the delay occasioned by requiring prior notice and comment. The amendment only removes, to the extent permissible, a requirement that could result in an unintentionally inequitable result and provides more flexibility for administering the program. As such, prior notice and comment are unnecessary under 24 CFR Part 10. The Department, however, is soliciting comments on this change, and will consider whether changes should be made to this section as a result of the comments.

*Paperwork Reduction Act*

The information collection requirements for the Home Investment Partnerships Program have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980

(44 U.S.C. 3501–3520), and assigned OMB control number 2501–0013. This rule does not contain additional information collection requirements. 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.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 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 does not impose any Federal mandates on any State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

*Environmental Impact*

At the time of publication of the proposed rule, a Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The proposed rule is adopted by this final rule without significant change. Accordingly, the initial Finding of No Significant Impact remains applicable, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

*Impact on Small Entities*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities, because jurisdictions that are statutorily eligible to receive formula allocations are relatively larger cities, counties or States. The rule will have no adverse or disproportionate economic impact on small businesses.

*Federalism Impact*

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that this rule does not have federalism implications concerning the division of local, State, and federal responsibilities. This rule only streamlines the Home regulations by removing provisions determined to be unnecessary or overly restrictive.

The Catalog of Federal Domestic Assistance Number for the Home Program is 14.239.

**List of Subjects in 24 CFR Part 92**

Grant programs—housing and community development, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, part 92 of title 24 of the Code of Federal Regulations is amended to read as follows:

## PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

1. The authority citation for part 92 continues to read as follows:

**Authority:** Title II, Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701–12839); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 92.220, paragraphs (a)(1)(iii)(B)(*2*) and (a)(1)(iii)(B)(*3*) are revised, and a new paragraph (a)(1)(iii)(B)(*4*) is added, to read as follows:

### § 92.220 Form of matching contribution.

(a) * * *

(1) * * *

(iii) * * *

(B) * * *

(*2*) With respect to one- to four-unit housing financed with an adjustable interest rate mortgage, a rate equal to the one-year Treasury bill rate plus 250 basis points;

(*3*) With respect to a multifamily project, a rate equal to the 10-year Treasury note rate plus 300 basis points; or

(*4*) With respect to housing receiving financing for rehabilitation, a rate equal to the 10-year Treasury note rate plus 400 basis points.

* * * * *

3. In § 92.252, a new sentence is added to the end of paragraph (i)(2), to read as follows:

### § 92.252 Qualification as affordable housing: Rental housing.

* * * * *

(i) * * *

(2) * * * In addition, in projects in which the Home units are designated as floating pursuant to paragraph (j) of this section, tenants who no longer qualify as low-income are not required to pay as rent an amount that exceeds the market rent for comparable, unassisted units in the neighborhood.

* * * * *

4. Section 92.453 is revised to read as follows:

### § 92.453 Competitive reallocations.

(a) HUD will invite applications through **Federal Register** publication of a Notice of Funding Availability (NOFA), in accordance with section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) and the requirements of sec. 217(c) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(c)), for HOME funds that become available for competitive reallocation under § 92.451 or § 92.452, or both. The NOFA will describe the application requirements and procedures, including the total funding available for the competition and any maximum amount of individual awards. The NOFA will also describe the selection criteria and any special factors to be evaluated in awarding points under the selection criteria.

(b) The NOFA will include the selection criteria at sec. 217(c) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(c)), with the following maximum number of points awarded for each category of criteria:

(1) *Commitment.* Up to 25 points for the criteria at sec. 217(c)(1) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(c)(1));

(2) *Actions.* Up to 50 points for the criteria at sec. 217(c)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(c)(2)); and

(3) *Policies.* Up to 25 points for the criteria at sec. 217(c)(3) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(c)(3)).

5. Section 92.507 is revised to read as follows:

### § 92.507 Closeout.

Home funds will be closed out in accordance with procedures established by HUD.

6. In § 92.552, paragraph (b) is revised to read as follows:

### § 92.552 Notice and opportunity for hearing; sanctions.

* * * * *

(b) *Proceedings.* When HUD proposes to take action pursuant to this section, the respondent in the proceedings will be the participating jurisdiction or, at HUD's option, the State recipient. Proceedings will be conducted in accordance with 24 CFR part 26, subpart B.

Dated: July 23, 1997.

**Andrew Cuomo,**

*Secretary.*

[FR Doc. 97–22296 Filed 8–21–97; 8:45 am]

BILLING CODE 4210–32–P

federal register

Friday
August 22, 1997

# Part VI

# Library of Congress

## Copyright Office

## Copyright Restoration of Works in Accordance With the Uruguay Round Agreements Act; List Identifying Copyrights Restored Under the Uruguay Round Agreements Act for Which Notices of Intent To Enforce Restored Copyrights Were Filed in the Copyright Office; Notice

## LIBRARY OF CONGRESS

## Copyright Office

**[Docket No. 97–3A]**

## Copyright Restoration of Works in Accordance With the Uruguay Round Agreements Act; List Identifying Copyrights Restored Under the Uruguay Round Agreements Act for Which Notices of Intent To Enforce Restored Copyrights Were Filed in the Copyright Office

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Publication of fifth list of notices of intent to enforce copyrights restored under the Uruguay Round Agreements Act.

**SUMMARY:** The Copyright Office is publishing its fifth list of restored copyrights for which it has received and processed notices of intent to enforce a copyright restored under the Uruguay Round Agreements Act. Publication of the lists creates a record for the public to identify copyright owners and works whose copyright has been restored for which notices of intent to enforce have been filed with the Copyright Office.

**EFFECTIVE DATE:** August 22, 1997.

**FOR FURTHER INFORMATION CONTACT:** Marilyn J. Kretsinger, Assistant General Counsel, or Charlotte Douglass, Principal Legal Advisor to the General Counsel, Copyright GC/I&R, Post Office Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Uruguay Round General Agreement on Tariffs and Trade and the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465; 108 Stat. 4809 (1994)) provide for the restoration of copyright in certain works that were in the public domain in the United States. Under section 104A of title 17 [1] of the United States Code as provided by the URAA, copyright protection was restored on January 1, 1996, in certain works by foreign nationals or domiciliaries of World Trade Organization (WTO) or Berne countries that were not protected under the copyright law for the reasons listed below in (2). Specifically, for restoration of copyright, a work must be an original work of authorship that:

(1) Is not in the public domain in its source country through expiration of term of protection;

(2) Is in the public domain in the United States due to:

(i) Noncompliance with formalities imposed at any time by United States copyright law, including failure of renewal, publishing the work without a proper notice, or failure to comply with any manufacturing requirements; (ii) lack of subject matter protection in the case of sound recordings fixed before February 15, 1972; or

(iii) Lack of national eligibility (e.g., the work is from a country with which the United States did not have copyright relations at the time of the work's publication); and

(3) Has at least one author (or in the case of sound recordings, rightholder) who was, at the time the work was created, a national or domiciliary of an eligible country. If the work was published, it must have been first published in an eligible country and not published in the United States within 30 days of first publication.

See 17 U.S.C. 104A(h)(6). A work meeting these requirements is protected ''for the remainder of the term of copyright that the work would have otherwise been granted in the United States if the work never entered the public domain in the United States.'' 17 U.S.C. 104A(a)(1)(B).

Although the copyright owner may immediately enforce the restored copyright against individuals who infringe his or her rights on or after the effective date of restoration, the copyright owner's right to enforce the restored copyright is delayed against reliance parties. Typically, a reliance party is one who was already using the work before December 8, 1994, the date the URAA was enacted. See 17 U.S.C. 104A(h)(4). Before a copyright owner can enforce a restored copyright against a reliance party, the copyright owner must file a Notice of Intent (NIE) with the Copyright Office or serve an NIE on such a party.

An NIE may be filed in the Copyright Office within two years of the date of restoration of copyright. Alternatively, an NIE may be served on an individual reliance party at any time during the term of copyright; however, such notices are effective only against the party served and those who have actual knowledge of the notice and its contents. NIEs appropriately filed with the Copyright Office and published herein serve as constructive notice to all reliance parties.

### II. Corrections Procedure

The Copyright Office has promulgated final regulations that provide for filing NIEs with the Office. 60 FR 50414 (Sept. 29, 1995). As required by 17 U.S.C. 104A(e)(1)(A)(iii), the Office's final regulation included provisions for the correction of minor errors or omissions. In response to requests for more detailed instructions for correcting all kinds of errors made in filing NIEs, the Office published further instructions in a proposed regulation on July 30, 1997. 62 FR 40780 (1997).

### III. Administrative Processing

Pursuant to the URAA, the Office is publishing its fifth four-month list identifying restored works for notices of intent to enforce a restored copyright filed with the Office. 17 U.S.C. 104A(e)(1)(B). The earlier lists were published between May 1, 1996, and April 25, 1997. 61 FR 19372 (May 1, 1996), 61 FR 46134 (Aug. 30, 1996), 61 FR 68454 (Dec. 27, 1996), and 62 FR 20211 (April 25, 1997). We have published only the names of the owners and the titles listed in the NIEs because that is all that is required by law. The funds needed to include any additional information are not available. The NIEs listed herein are those entered into the public records of the Office between April 11, 1997, and August 8, 1997. To allow for processing NIE information, the Office closes the record for publication approximately two weeks before publication. Accordingly, the cutoff date for publication of the sixth NIE list on December 19, 1997, will be on or about December 5. NIEs received in the Office after this cutoff date and on or before December 31, 1997, will be published in the seventh NIE list appearing in the **Federal Register**. For works restored to copyright on January 1, 1996, an NIE must be filed on or before December 31, 1997, to be accepted in the Copyright Office as a timely filing. The Copyright Office will not publish title and ownership information from an NIE received in the Office after expiry of the 24-month period beginning on the date of restoration of that particular work, as reflected by the source country given on the NIE. See 17 U.S.C. 104A(d)(2).

### IV. On-line Availability of NIE Lists

Using the information provided herein, one may search the Office's database to obtain additional information about a particular NIE. NIEs are located in what is known as the Copyright Office History Documents

[1] The URAA's amendment of 17 U.S.C. 104A replaced section 104A under the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, 2115 (1993)). The Uruguay Round Trade Agreements, Texts of Agreements, Implementing Bill, Statement of Administrative Action, and Required Supporting Statements, H.R. Doc. No. 316, 103d Cong., 2d Sess. 324 (1994). *See* 60 FR 50414 (Sept. 29, 1995).

(COHD) file. This file is available from computer terminals located in the Copyright Office itself or from terminals located in other parts of the Library of Congress through the Library of Congress Information System (LOCIS). Alternative ways to connect through Internet are (i) the World Wide Web (WWW), using the Copyright Office Home Page at: http://www.loc.gov/copyright; (ii) connect directly to LOCIS through the telnet address at locis.loc.gov; or (iii) use the Library of Congress gopher LC MARVEL at: marvel.loc.gov port 70. LC MARVEL and WWW are available 24 hours a day. LOCIS is available 24 hours a day Monday through Friday, Eastern Time; Saturday, until 5 p.m.; and Sunday after 11 a.m.[2] Information available online includes: the title or brief description if untitled; an English translation of the title; the alternative titles if any; the name of the copyright owner or owner of one or more exclusive rights, the date of receipt of the NIE in the Copyright Office; the date of publication in the **Federal Register**; and the address, telephone and telefax number of the copyright owner. If given on the NIE, the online information will also include the author, the type of work, and the rights covered by the notice. See 37 CFR 201.33(f). For the purpose of researching the full Office record of NIEs on the Internet, the Office has made online searching instructions accessible through the Copyright Office Home Page. Researchers can access them through the Library of Congress Home Page on the World Wide Web by selecting the copyright link. Select the menu item ''Copyright Office Records'' and/or ''URAA, GATT Amends U.S. law.'' Finally, images of the complete NIEs as filed are on optical disc and available from the Copyright Office.

The following restored works are listed alphabetically by copyright owner; multiple works owned by a particular copyright owner are listed alphabetically by title. Works having more than one copyright proprietor are listed under the first owner and cross-referenced to the succeeding owner(s). A cross-reference to the composite owner (e.g., Title I owned by ''A B & C'') will state, ''SEE A B & C'' at the listing for each individual owner, (e.g., for Owner A, for Owner B and for Owner C).

[2] Not all files are available after 9:30 p.m. on weekdays. On Sundays, all files may not be available from 5 p.m.—8 p.m.

## V. Fifth List of Notices of Intent to Enforce

**Antenne 2. SEE Pathe & Antenne 2**

**Ardennes. SEE Cogelda and Ardennes**

**Ariane and Cogelda**

Classe tous risques.

**Ariane and Pathe**

Non coupable

**Ariane. SEE Cogelda and Ariane**

**Ariane. SEE Cogelda, Ariane and Rizzoli**

**Arlano. SEE Cogelda and Arlano**

**Authors Rights Restoration Corporation, Inc.**

880 super cop.
A desnudarse . . . tocan.
A media luz.
A paso de cojo.
A quien le doy la suerte.
A sablazo limpno.
A Sadam le Dam.
A volar, joven.
Abajo el telon.
Las abandonadas.
Aborto.
Acapulco.
Acapulco 12–22.
Adios cunado.
Adios mi chaparrita.
Adios Nicanor.
Un adorable sinverguenza.
Adorables mujercitas.
Las adulteras.
Adulterio.
Las adventuras de Juliancito.
El agarra todo.
Agarrando parejo.
Las aguas bajan, turbias.
Aguilas de acero.
Aguilas de acero II.
Ahi madre.
El ahorcado.
Al caer la noche.
Al compas del rock-n-roll.
Al filo de terror.
Al fin que ni queria.
Al margen de la ley.
Al son del Charleston.
La alacrana.
Alas doradas.
Los albureros.
Alerta alta tension.
Algo es algo dijo el diablo.
Alguien nos quiere matar.
El alimento del miedo.
Alla en el rancho de las flores.
Alla en la plaza Garibaldi II.
Alma de acero.
Almas rebeldes.
Alto poder.
Los amantes frios.
El amarrador.
Los amates.
Ambicion sangrienta.
Amigo.
Las amiguitas de los ricos.
Amor a balazo limpio.
Amor con amor se paga.
Amor de la calle.
Amor de locura.
El amor de Maria Isabel.
Amor de una vida.
El amor es mal negocio.
El amor es un juego extrano.
El amor llego a Jalisco.
Amor perdido.
Amor se dice cantando.
El amor y esas cosas.
Amor, que malo eres.
Amorcito corazon.
Amores de un torero.
Los amores de una viuda.
El analfabeto.
Angel o demonio.
Un angel para los diablillos.
Angeles de la muerte.
Angeles de la noche.
Anillo de compromiso.
El anima de Sayula.
Anima del ahorcado contra el latigo negro.
Los anos verdes.
Ante el cadaver de un lider.
Antonieta.
El apenitas.
Aprendiedo a vivir.
Aprendiendo a vivir.
Aqui estan los Aguilares.
Aqui estan los villaloboa.
AR–15 comando implacable.
Arriba los machos (me importa poco).
Asalto en Tijuana.
El asalto.
Ases del contrabando.
Asesino de la montana (cazador de malditos).
El asesino del metro.
Asesino del metro.
El asesino enmascarado.
Asesino nocturno.
Asesinos (contrabandistas de ninos).
Los asesinos.
Atacan las brujas.
El ataud del vampiro.
Ataud infernal.
Atraco internacional.
Los automatas de la muerte.
Automatas de la muerte.
Las aventuras de las hermanas X.
Aventuras de un caballo blanco y un nino.
El aviso inoportuno.
Ay . . . Jalisco cuanto Apache.
Ay amor como me has puesto.
Ay calypso no te rajes.
Ay chihuahua no te rajes!
Ay Jalisco cuanto Apache.
Ay jalisco no te rajes! (2da. version).
Azul.
Bajo el cielo de Mexico.
Bala de plata en el pueblo maldito.
Bala de plata.
La banda del carro rojo.
La bandid.
Los bandidos de Rio Frio.
La barca de oro.
El baron del terror.
Baron del terror.
La barranca de la muerte.
Barranca sangrienta.
La barranca sangrienta.
Barridos y regados.
Beisbolista fenomeno, el 1a. parte.
Beisbolista fenomeno, el 2a. parte.
Bellas de noche.
Bello durmente.
Besito a Papa.
Besos prohibidos.
Besos, besos y mas besos.
La bestia.
Bikinis y rock.
El billetero.

Blue demon contra el poder s.
Blue demon contra los cerebros infernales.
Blue demon.
Bodas de oro.
Bohemio de aficion.
El bolero de Raquel.
Bolero inmortal.
El bombero atomico.
Borrachos de Pulqueria.
Borrasca.
Braceras y mojados.
Las Braceras.
Bromas, S.A.
El bronco reynosa.
Bronco.
La bruja.
La bruja del ocho.
El buena suerte.
Buenas y conmovidas.
Bugambilia.
Buscando la muerte.
Buscando un campeon.
Cabalgando con la muerte.
Caballera blanca.
Caballero a la medida.
Caballo cantador.
El caballo del diablo.
Caballo prieto azabache.
Cabaret tragico.
La cabeza viviente.
Cabo de hornos.
Caceria implacable.
Cachas de oro.
El cafre.
Calentura del Sabado por la noche.
Calibre 44.
California dancing club.
Callejera.
Callejon sin salida (38).
Callejon sin salida (64).
Cama de piedra.
Camarena vive.
Los camaroneros (camaronesros y su).
Caminantes si hay caminos.
Camino al infierno.
Camino alegre.
Camino de Sacramento.
Camino del infierno.
Camino del mar.
El campeon ciclusta.
Campeon sin corona.
Los campeones justicieros.
Cana brava.
Canada de lobos.
Cananea II.
La cantina.
Canto a las Americas.
El canto de los humildes.
El canto del cisne.
Canto mi tierra.
Caperucita Roja.
Captitan de rurales.
Captura de Gabino Barrera.
Cara de angel.
Caravelle (el malvado caravell).
El cardenal.
Caribena.
Las carinosas.
El carinoso.
Carita de cielo.
Carlos el terrorista.
Carnada.
Carne de horca.
Carne de presidio.
Carrona humana.
Cartas a Ufemia.
Cartas marcadas.
Cartucho cortado.
La casa colorada.
La casa de las muchachas.
La casa del pelicano.
La casa prohibida.
Las casadas enganan de 4 a 6.
Casate conmigo (la blanca doble).
Cascabel.
Cascabelito.
Caseria de un fugitivo.
Caso casados.
Cazador de asesinos.
El cazador.
Cazadores de asesinos.
Cazadores de cabezas.
Cazadores de espias.
La celda del alacran.
Cementerio de mojados.
El cementerio del terror.
Cencento.
La chamaca.
Chaneque o criatura infernal.
Chanoc en el foso de las serpientes.
Chaparro se mete en todo.
Charro de las calaveras.
El charro del Cristo.
El charro del misterio.
La chica del alacran de oro.
Chicoasen.
Los chiflados del rock'n roll.
La choca.
Choque de mafias.
Chucho el remendado.
Cica quien sabe querer.
Ciclon.
Cielito lindo.
El cielo y la tierra.
El cielo y tu.
Los cinco halcones.
Cinco vidas y un destino.
El cinico.
El circo.
Cita con el asesino.
Cita con la muerte.
La colina de la muerte.
Color de nuestra piel.
Comando marino.
La comdreja.
La comezon del amor.
Los comicos de la legua.
Como atrapar marido.
Como perros y gatos.
Como pescar marido.
Las computadoras.
Con ganas de morir.
Con la misma moneda.
Con la muerte en ancas.
Concurso de belleza.
Conexion Mexico.
Confidencias de un ruletero.
Confidencias matrimoniales.
La conquista del dorado.
Conquistador de la luna.
Contigo a la distancia.
Contrabando y muerte.
Contrato con la muerte.
La coralillo.
Corazon de nino (62).
Corneta de mi general.
Un cornudo muy picudo.
Corona de lagrimas.
Corrido de los Perez.
Corrupcion encadenada.
Cortesana.
Cosa facil.
Cosas prohibidas.
El costo de la vida.
El crepusculo de un Dios.
Crimen en el teatro Chino.
El criminal.
La crisis me da risa.
El Cristo Negro.
Cristo setenta.
Cristobal Colon.
Cruz de amor.
Cruz de olvido.
Cuando el Diablo sopla.
Cuando habla el corazon.
Cuando me vaya.
Cuando Mexico canta.
Cuando se quiere, se quiere.
Cuando tu me quieras.
Los cuates de la Rosenda.
Cuates de Rosenda.
El cuatrero.
Cuatro contra el imperio.
Cuatro contra el mundo.
Cuatro copas.
Cuatro hombres marcados.
Cuatro pillos y un vivales.
Cuatro vidas.
Cucurrucucu paloma.
El cuerpazo del delito.
Un cuerpo de mujer.
La culpable.
Cuna de campeones.
Cuna de valientes.
Curados de espanto.
El dama y el torero.
Dancing.
El Dandy y sus mujeres.
De hombre a hombre.
La de los ojos en blanco.
De tal palo, tal astilla.
Debieron ahorcarlos antes.
Las del talon.
Delirio tropical.
Demonios del desierto.
Los derechos de los hijos.
Deseo de sangre.
Los desheredados.
Desnudate Lucrecia.
Destrampados en Los Ales.
Los destrampados.
Deuda saldada.
Un dia con el Diablo.
Un diablillo angelical.
El Diablo no tiene sexo.
Diabolico triangulo de las Bermudas.
La Diana cazadora.
Diario de una mujer.
Dicen que soy comunista.
La diligencia de la muerte.
Dimas de leon.
Dinamita kid.
La dinastia Dracula.
La dinasty of Perez.
El dinero no es la vida.
Los dineros del diablo.
Dios los cria (75).
Dios los cria.
Dios no lo quiera.
La diosa de port.
La diosa de Tahiti.
Director de monstruos.
Divorciadas.
El doctor satan.
Dona perfecta.
Donde nacen los pobres.
Un dorado de Pancho Villa.
Los dos apostoles.

Dos camioneros con suerte.
Los dos carnales.
Dos charros y una gitana.
Dos corazones y un cielo.
Dos corazones y un tango.
Dos cuates a todo dar.
Dos de abajo.
Dos esposas en mi cama.
Las dos galleras.
Dos gallos de pelea.
Dos hermanos murieron.
Dos hijos desobedientes.
Dos maridos maratos.
Los dos matones.
Dos nacos al rescate.
Dos ratas de altura.
Dos tipos con suerte.
Dos tontos y un loco.
Dos valientes.
La duda (72).
Duelo de pistoleros.
Duelo en el dorado.
La dulce enemiga.
Durazo.
Duro pero seguro.
Echenme al gato.
La edad de la tentacion.
La edad peligrosa.
Ella, lucifer y yo.
Ellas tambien son rebeldes.
La emboscada.
El embustero.
En cada puerto un amor.
En la hacienda de la flor.
En la pallma de tu mano.
En la trampa.
En las garras de la ciudad.
Encapuchados del infierno.
Encuentro con la muerte.
Encuentro sangriento.
Los enmascarados del infierno.
Los enredos de una gallega.
Entre cornudos te veas.
Entre ficheras anda el Diablo.
Entre hierba, polvo y plomo.
Entrega inmediata.
Los enviados del infierno.
Erotica.
Esa vieja es una fiera.
Escape sangriento.
El escapulario.
Escuadron 201.
Escuela de ficheras.
Escuela de place.
Escuela de valientes.
Escuelas de placer.
Esos anos violentos.
Espaldas mojadas.
Espejismo de la ciudad.
Espiritismo.
Esposa o amante.
Esposa te doy.
Esposas infieles.
Esquina bajan!
La esquina de mi barrio.
Esta noche cena Pancho.
Estas ruinas que ves.
Estoy sentenciado a muerte.
Estoy tan enamorada.
Estrella negra.
Estrella sin luz.
El extra.
Una extrana mujer.
Extrana obesion.
Fabricante de panico.
Las fabulosas del reventon II.
Fallaste corazon.
Una familia de tantas.
Los fanarrones.
El fantasma de la opereta.
El fantasma se enamora.
Fantoche.
Los fayuqeros.
Los fayuqueros de tepito.
El Federal de caminos.
El Federal de caminos II.
Felipe Reyes en el rostro del.
Felipe Reyes vs. la banda del.
Feria de San Marcos.
Ferias de Mexico.
Los Fernandez de peralvillo.
La fichera mas rapida del Oeste.
Las ficheras.
Fieras contra fieras.
Fiesta de la muerte.
Fiesta en el corazon.
El fin del imperio.
El fiscal de hierro.
Fistol del diablo.
Flaco, flaco pero no para tu taco.
Frankenstein, el vampiro y cia.
Fray Valention 2.
La frontera sin ley.
El fuego de mi ahijada.
La fuerza del desseo.
La fuga del rojo.
El fugitivo de sonora.
La furia del ring.
Futbol Mexico 70.
Gabino Barrera.
Gabriela (la intrusa).
La gallera.
El gangster.
La garra del leopardo.
Garra del tigre.
Gatillo veloz.
Gato con gatas I.
Gato con gatas II.
El gato sin botas.
El gato.
El gavilan pollero.
El gendarme desconocido.
El gesticulador.
El Giro, el Pinto y el Colorado.
Una gitana en Jalisco.
Una gitana en Mexico.
Gitana tenias que ser.
Las glorias del gran puas.
La golfa de barrio.
Gran hotel.
El gran perro muerto.
Una gringuita en Mexico.
Un grito en la noche.
Guantes de oro.
La guarida del buitre.
La guerra de los bikinis.
La guerrera vengadora.
La guerrillera de villa.
Guyana, el crimen del siglo.
Ha entrado una mujer.
Habia una vez un marido.
El hacha diabolica.
El hambre nuestra de cada dia.
Han violado a una mujer.
Hay angeles con espuelas.
Hay lugar para dos.
Hay un nino en su futuro.
El hechizo de pantano.
Herencia de valientes.
Herencia diabolica.
Las Hermanas Karambazo.
La hermanita dinamita.
Los hermanos buena onda.
Hermanos de sangre.
Los hermanos diablos.
Los hermanos Machorro.
Hermoso ideal.
La hija del regimiento.
Las hijas del zorro.
Hijazo de mi vidaza.
El hijo de Gabino Barrera.
El hijo de traficante.
Los hijos ajenos.
Los hijos de Peralvillo.
Los hijos de satanas.
Hijos del criminal.
Hilario Cortes rey del talon.
Hipocrita.
Historia de un amor.
Historia de un marido infiel.
Historia de una mujer.
Los hojalateros.
Hombre de accion.
Hombre de mar.
El hombre del alazan.
Hombre que logro ser invisible.
El hombre que quiso ser pobre.
El hombre y el monstruo.
Hombres de mar.
Los hombres no lloran.
La hora 24.
La hora de la verdad.
Hora y media de balazos.
Huele a gas.
La huella del Chacal.
La huella macabra.
Los huespedes de la marquesa.
Los humillados.
Ilegales y mojados.
La ilegitma.
El imponente.
La india.
El indomable.
Las infieles.
El inocente.
Inseminasion artificial.
Las interesadas.
La invasion de los vampiros.
Las invencibles.
Invitation a morir.
La isla de la pasion.
La isla de los dinosaurios.
Isla de mujeres.
La Isla de Rarotonga.
La Isla Maldita.
Ja estoy casdo ja.
Jacinto, el tullido.
Jesus de Nazareth.
El jinete de la muerte.
Jinete justiciero retando a la muerte.
El jinete negro.
Jinete solitario en el valle de los.
Jinete solitario en el valle de los buitres.
El Jinete solitario.
Jineted de la llanura.
El jorobado.
Joselito el vagabundo.
Los jovenes.
Juan Armienta.
Juan el desalmado.
Juan el enterrador.
Juan Guerrero.
Juana la Cubana.
El judicial (carne de canon).
Judicial o criminal.
Juego diabolico.
El juicio de Martin Cortes.
La justicia de los villalobos.

La justicia del gavilan vengador.
Juventud desfrenada.
Juventud desnuda.
Juventud rebelde.
Juventud sin ley.
Keiko la ballena asesina.
KNZ Berlen.
Konga roja.
Laberinto de pasiones.
El ladron fenomeno.
Ladron que roba a ladron.
La ladrona.
Ladrones de tumbas.
Lagrimas de amor.
Lamineros por ficheras.
Latigo negro contra los farsantes.
El latigo negro.
Los laureles.
Lauro Punales.
Lazaro Cardenas.
Los leones del ring vs la cosa nostra.
Los leones del ring.
La ley de las pistolas.
La ley del gavilan.
La ley del monte.
Una leyenda de amor.
La leyenda del manco.
La liga de las muchachas.
Limosneros con garrote.
Lio de faldas.
Los lios de barba azul.
La llamada de la muerte.
Llamenme Mike.
Lo blanco, lo rojo y lo negro.
El lobo blanco.
El lobo salvaje.
Lobo solitario.
Locura de terror.
Lola la trailera.
Lola la trailera II.
La loteria.
El luchador fenomeno.
Las luchadoras vs el medico asesino.
Las luchadoras vs el robot asesino.
Las luchadoras vs la momia.
Lucio Vazquez.
La luna enamorada.
Un macho en el hotel.
Un macho en el reformatorio de senoritas.
Un macho en el salon de belleza.
Un macho en la carcel de mujeres.
Macho que ladra no muerde.
Macho y hembra.
La mafia del crimen.
Magnum.
El mago.
Los maistros.
Mala hembra.
La malcasada.
La maldicion de la llorona.
La maldicion de la momia.
La maldicion de Nostradamus.
La maldicion de oro.
La maldicion del oro.
Los malditos.
Los malvivientes.
Mama solita.
Mama soy Paquito.
Mama soy Paquito II.
Manana seran hombres.
El manantial de amor.
Manicomio.
La mano de Dios.
Manos arriba.
Mansion satanica.
El mar y tu.
La marca del cuervo.
La marca del gavilan.
La marca del muerto.
Marcados por el destino.
Maria Candelaria.
Maria Isabel.
Mariachi desconocido.
El marido de mi novia.
Un marido infiel.
La mariposa del estero.
Martes 13.
El martier del calvario.
Martin Romero, el rapido.
La Martina.
Mas corazon que odio.
Mas fuerte que la sangre.
Mas vale pajaro en mano.
Matanza en Matamoros.
Maten al fugitivo.
Maternidad imposible.
El matrimonio ed somo el demonio.
Matrimonio sintetico.
Mauricio Rosales, el rayo.
Mauro, el mojado.
Me caiste del cielo.
Me gustan valentones.
Me ha besado un hombre.
Me ha gustado un hombre.
Me llaman el cantaclaro.
Me lleva la tristeza.
Me persigue una mujer.
Me quiero casar.
Mecanica Mexicana.
Mecanica nacional.
Medias de seda.
El medico de las locas.
Melodias inolvidables.
Menores de edad.
Mente asesina.
La metralla infernal.
El Mexicano.
El Mexicano universal.
Mexico 2000.
Mexico Norte.
Mexico nunca duerme.
Mi adorado salvaje.
Mi aventura en Puerto Rico.
Mi caballo.
Mi candidato.
Mi destino es la muerte.
Mi heroe.
Mi marido.
Mi mujer tiene amante.
Mi negra consentida.
Mi noche de bodas.
Mi nombre es gatillo.
Mi novia ya no es Virginia.
Mi papa tuvo la culpa.
Mi venganza.
Mi viuda alegre.
La miel se fue de la luna.
Mientras Mexico duerme.
Mientras Mexico duerme (38).
Mientras Mexico duerme (83).
Mil abusos.
Mil millas al sur.
El mil usos.
El mil usos II.
El Milagro del barrio.
Milagro en el barrio.
Milagro en el circo.
Los millones de chaflan.
Minifaldas con espuelas.
La minte y el crimen.
Miracle in the circus.
Miradas que matan.
Mirads que matan.
Mis secretarias privadas.
Mis tres viudas alegres.
Misa de cuerpo presente.
Mision sangrienta.
El misterio del latigo negro.
Modelo de desnudos.
El moderno barba azul.
El mofles en Acapulco.
El mofles y los mecanicos.
Mojados.
Momia Azteca vs. el robot.
La momia Azteca.
Las momias de Guanajuato.
El monje loco.
El monstruo de los volcanes.
Morir de pie.
Morir mil muertes.
Morir para vivir.
Muchachas, muchachas, muchachas.
El muchacho alegre.
La muerte cruzo el Rio Bravo.
Muerte de federal de caminos.
La muerte de un gallero.
Muerte en la playa.
Muerte en Tijuana.
La muerte pasa lista.
Muerte, traicion y contrabando.
El muerto murio.
Muertos de miedo.
Lo muertos no hablan.
La mugrosita.
La mujer del puerto.
Una mujer honesta.
La mujer marcada.
La mujer marcada (2da. version).
La mujer murcielago.
Una mujer sin amor.
Una mujer sin destino.
La mujer y la bestia.
Mujercitas.
Mujeres encantadoras.
Las mujeres panteras.
Mujeres sin manana.
Mujeres, mujeres, mujeres.
Mujeriego.
Los mujeriegos.
Mulata.
El mundo de los vampiros.
La muneca perversa.
Munecas de medianoche.
Las munecas infernales.
El muro del silencio.
Musica, mujer y amor.
Las musiqueras.
Nacidos para morir.
Narcotirador.
Los naufragos de Luguria.
Naufragos II.
La nave de los monstruos.
Necesita un marido.
Neutron el enmascarado negro.
Ni Chana ni Juana.
Ni hablar del peluquin.
Ni pobres, ni ricos.
Ni sangre, ni arena.
El nieto del Zorro.
La nina de la mochila azul I.
La nina de la mochila azul II.
El Ninja Mexicano.
Nino rico, nino pobre.
No me las des llorando.
No soy monedita de oro.
No te la vas a acabar.
La noche avanza.
Noche de juerga.

Noche de perdicion.
Noche de ronda.
Noches de cabaret.
Nocturno de amor.
Nora la rebelde.
Nos lleva la tristeza.
Nosotros los feos.
Nosotros los rateros.
Nostradamus el genio de las tinieblas.
Noventa minutos de amor.
Novias impacientes.
Nunca besare tu boca.
Octagon y mascara sagrada en lucha a.
Oficio mas antiguo del mundo.
El ojo de vidrio.
Los ojos de un nino.
Ojos tapatios.
Ondina.
Operacion 67.
Operacion marihuana.
Oreja rajada.
Otro caso de violacion.
Las ovejas descarriadas.
Pa' que me sirve la vida?
EL Padre Guaracha o me caso con un cura.
Un padre a toda maquina.
El padre pistolas.
El padre trampitas.
El pajaro sin suelas.
Palabras de mujer.
Paloma brava.
Paloma herida.
Pancho el Sancho.
Pancho Lopez.
Pancho Sancho.
Pandilla de criminales.
Pandilla diabolica.
La pandilla infernal.
El pandillero.
Panico en el bosque.
Panico en el paraiso o violencia.
Panico en la montana.
La pantera negra.
Un par a todo dar.
Para siempre amor mio.
Paraiso.
El pasajero 10,000.
Pasion oculta.
El pecado de Laura.
El pecado de una madre.
Pecado.
Pecadora.
Pecadoras.
Pegando con tubo.
Los pellejos de mi compadre.
El pelon se mete en todo.
Pena, penita ... pena.
Penthouse de la muerte.
Penthouse.
Peor que los buitres.
Pepito y la lampara maravillosa.
Pepito y los robachicos.
La pequena senora de Perez (70).
Perdoname mi vida.
El perfil del crimen.
Las perfumadas.
Perro callejero I.
Perro callejero II.
Perros de presa.
Persecucion y muerte de Benjamin.
Perseguida.
Perseguido por la ley.
Perseguidos por la ley.
La perversa.
Los perversos.
Pervertida.
Las pervertidas.
Pesadilla mortal.
Los peseros.
Picardia Mexicana.
Una piedra en el zapato.
Piernas cruzadas.
Piernas de oro.
Pies de gato.
Pilotos de combate.
La pintada.
Pistolas de ora.
Pistolas invencibles.
El pistolero del diablo.
Pistoleros a sueldo.
Pistoleros de la frontera.
Pistoleros del Oeste.
Los pistoleros.
Los pistolocos.
El placer de la venganza.
Los platos voladores.
Playa prohibida.
Una plegaria a Dios.
Los plomeros.
Pobre del pobre.
Pobre huerfanita.
Pobres pero sinverguenzas.
Los pobres van al cielo.
Policias y ladrones.
Por el mismo camino.
Por eso.
Por que peca la mujer.
Por un amor.
Porros calles sangrientas.
El portero.
El precio de la gloria.
Preludo de muerte.
La presidenta municipal.
El preso numero 9.
Prestame a tu mujer.
Prestame tu cuerpo.
La Primera Comunion.
La princesa hippie.
Princesa y vagabunda.
Prisionera del pasado.
Profandores de tumba (traficantes de la m...).
El profesor.
Programado para morir.
La proxima vietimu.
Las puchachas (salsa con chile).
Pueblerina.
Pueblito.
El pueblo del pecado.
El puente.
El puente otra vez.
La puerta y la mujer del carnicero.
Puerta, joven.
Puerto maldito.
La pulqueria.
La pulqueria ataca de nuevo.
La pulqueria II.
La pulqueria IV.
Punos de roca.
Que le tiras cuando suenas Mexicano.
Que lindo cha, cha, cha.
Que me toquen las golondrinas.
El que murio de amor.
Que padre tan padre.
Que perra vida.
Que seas feliz.
Que te vaya bonito.
Los que volvieron.
Quiero morir en carnaval.
Un quijote sin mancha.
Quinceanera.
Quinto patio (69).
Quisiera ser hombre.
Rafaga del plomo.
Raffels.
El rapido.
El rapido de las 9:15.
El rapto.
Rarotonga.
Una rata en la oscuridad.
Ratas de la frontera.
La raza nunca pierde.
El rebelde.
La rebelion de las hijas.
La rebelion de los adolescentes.
Recein casados, no molestar.
Las recien casadas.
Recuerdos de mi valle.
Recuerdos del porvenir.
La red.
Refifi entre las mjueres.
Refugiados en Madrid.
Regalo de reyes.
El regreso del carro rojo.
Remolino de pasiones.
El renegado blanco.
Reportaje.
El reportero.
Los resbalosos.
El reten de la muerte.
Reto a la vida.
Retorno al Quinto Patio.
La revancha.
La revelion de las sirvientas.
Reventa de esclavas.
Reventa de esclavos.
Un reverendo trinquetero.
Revoltoso.
Revolver en guardia.
El revolver sangriento.
Rey de las ficheras.
El rey de los albures.
El rey de los caminos.
El rey del talon.
Los reyes del palenque.
Los reyes del volante.
Los reyes magos.
La reyna del mambo.
La riata del Charro Chano.
La rielera.
Rio escondido.
La risa trabajando.
Ritmo de twist.
El robot humano.
Rogaciano el huanpanguero.
Romeo y Julieta.
La rosa blanca.
Rosa la tequilera.
Rosita.
El rostro de la muerte.
El rostro de la muerte II.
El ruisenor del barrio.
La ruletera.
Rumba calliente.
Rutilo el forastero.
Sabor a sangre.
Salon de belleza.
Salon Mexico.
San Simon de los magueyes.
Sangre de Nostradamus.
Sangre de nuestra raza.
Santiago querido.
Santo contra el cerebro diabolico.
Santo contra el rey del crimen.
La Santo el enmascarado de plata en la.
Los Santo el enmascarado de plata vs. los.
Santo en el hotel de la muerte.
Santo en el tesoro de Dracula.
Santo en la venganza de la momia.

Santo en la venganza de las mujeres.
Santo en mision suicida.
Santo mision suicida.
Santo vs. Dr. Muerte.
Santo vs. el cerebro diabolico.
Santo vs. el espectro estranguldor.
Santo vs. el estrangulador.
Santo vs. el hacha diabolica.
Santo vs. el rey del crimen.
Santo vs. la magia negra.
Santo vs. la mafia del vicio.
Santo vs. las mujeres vampiro.
Santo vs. los cazadores de cabezas.
Santo vs. los secuestradores.
El santo vs. los zombies.
Santo y blue demon en el mundo.
Santo y blue demon en la atlantida.
Santo y Blue Demon en la Atlantida.
Santo y blue demon vs los montruos.
Santo y Blue Demon vs. Dracula y el hombre.
Santo y Blue Demon vs. Frankenstein.
Los santos reyes.
Satanico pandemonium.
El satiro.
Se alquila un marido.
Se le fue la mano.
La secretaria particular.
Secretario particular.
Secreto de Juan Palomo.
El secreto de mi mujer.
Los secretos del sexo debil.
Secuestrado.
El secuestro de Lola.
Secuestro de los 100 millones.
Secuestro en Acapulco (60).
Sed de amor.
El seductor.
La segunda mujer.
Seis dias para morir.
Los seis mandamientos de la risa.
Semana santa en Acapulco.
El semental de palo alto.
El senor fotografo.
La senora muerte.
Senora tentacion.
Serafino y la lampara libidinosa.
Serenata en Mexico.
Sexo contra sexo.
El sexo de los pobres.
El sexo fuerte.
Sexo me da risa.
El sexo no paga impuestos.
El sexo sentido.
Si esta noche.
Si me viera Don Porfirio.
Si mi vida.
Si usted no puede, yo si.
Si yo fuera diputado.
Si yo fuera millonario.
Las sicodelicas.
Siempre estare contigo.
Siempre hay un manana.
Siempre tuya.
La sierra del terror.
Las siete cucas.
Siete en la mira.
El siete machos.
Los siete ninos de ecija.
Siete pecados.
La silla de ruedas.
La silla de ruedas II.
La silla vacia.
Simbad el mariado.
Simplemente vivir.
Sin fortuna.
El sinalonse.
Sindicato de telemirones.
El sinverguenza.
Sobre el muerto las coronas.
Sobrevivencia o frontera perversa.
Las sobrinas del diablo.
Socios para la aventura.
Solitario.
Solitario indomable.
Solo hombre.
Soltera y con gemelos.
La sombra de chucho el roto.
La sombra del tunco.
La sombra en defensa de la juventud.
Sombra verde.
El sonambulo.
La sonrisa de la virgen.
La sonrisa de los pobres.
Una sota y un caballo.
La sotana del reo.
Soy el hijo del gallero.
Soy puro Mexicano.
Soy un golfo.
Soy un profugo.
Sube y baja.
El subersabio.
Sucecion de las brujas.
Sucedio en Acapulco.
La sucesion.
Sueno de Tony (Mexico 87-campeonato).
Suicidate mi amor.
El super policia 880.
Superhombre.
El supermacho.
Superzan.
Superzan el invencible.
Susana, demonio y carne.
Tacos al carbon.
Tacos joven.
Tacos, tortas y enchiladas.
Tal para cual.
Tal para qual.
El talachas y su meneito.
Tambien de dolor se canta.
Tambo.
Tan bueno el giro como el Colorado.
La taquera.
Tarahumara.
Te solte la rienda.
Te vi en T.V.
Tempestad.
Las tentadoras.
El terrible gigante de las nieves.
Territorio del ampa.
El terror de la frontera.
El tesoro de fantasma.
El tesoro de moctezuma.
El tesoro del Rey Salomon.
Tia candela.
Tiburoneros.
Tiempo y destiempo.
La tienda de la Calle M.
La tienda de la esquina.
Tierra de odio.
Tierra de rencores.
Tierra de sangre.
La tierra prometida.
La tigresa.
La tijera de odio.
La tijera de oro.
Tio de mi vida.
Tirando a gol.
To fui una usurpadora.
Todos eran valientes.
Tonight yes.
Tormenta de acero.
El toro negro.
El traficante.
El traficante 2.
El traficante II.
Trailer asesino.
Trampa fatal.
Treinta segundos para morir.
Los tres allegres compadres.
Los tres amores de Lola.
Tres bohemios.
Los tres bohemios.
Los tres camaradas.
Las tres coquetonas.
Tres desgraciados con suerte.
Los tres gallos.
Las tres magnificas.
Tres melodias de amor.
Los tres mosqueteros.
Los tres mosqueteros de dios.
Tres mujeres en la hoguera.
Los tres pecados.
Las tres pelonas.
Tres romeos y una julieta.
Tres valientes camaradas.
Las tres viudas alegres.
Triangulo.
Tribunal de justicia.
Tu eres la luz.
Tu hijo debe nacer.
Tu solo tu.
Tu y la mentira.
La tumba del mojado.
El tunco maclovio.
El tunel seis.
Tus ojos y mis manos.
El ultimo amor de Goya.
El ultimo round.
El ultimo testigo.
El ultimo triunfo.
El ultimo tunel.
Ultraje al amor.
Va de nuez.
Vacaciones de terror.
Vacaciones en acapulco.
Vagabimda.
Vagabunda.
Vagabundo y millonario.
El vagabundo.
El vagon de la muerte.
Valentin Armienta.
Valentin Lazana, el ratero de los pobres.
Los valientes no mueren.
El valle de los miserables.
Las vampiras.
El vampiro sangriento.
Vampiro sangriento.
El vampiro teporocho.
La venenosa (1era. version).
La venenosa (2da. version).
El vengador del 30–60.
Vengadoras enmascaradas.
Venganza Apache.
Venganza de Gabino Barrera.
La venganza de maria.
La venganza de ramona.
Venganza del resucitado.
La venganza del rojo.
La Venus de fuego.
La venus maldita.
Verano ardiente.
La verdad de la lucha.
Los verduleros III.
Viacrucis nacional.
Un viaje a la luna.
Viaje fantastico en globo.
Vibora caliente.
Victimas de la pobreza.

Victimas del pecado.
La vida de Agustin Lara.
La vida en broma.
La vida no vale nada.
Vida sin sosten.
Viento negro.
Viento salvaje.
Violencia a domicilio.
Violetero.
La Virgen de Coromoto.
La Virgen de Guadalupe.
Virgen de medianoche.
La virgen desnuda.
Virgenes de la nueva ola.
La virtud desnuda.
Visconde de Monte Cristo.
La visita que no toco el timebre.
Vistete Cristina.
Una viuda sin sosten.
Viva la parranda.
Vive como sea.
Vividores de mujeres.
Vivir para amar.
Voces de primavera.
Vuda sin sosten.
La vuelta del Mexicano.
Vuelva el sabado.
Vuelve el ojo de vidrio.
Vuelven los argumedo.
Vuelven los campeones justicieros.
Vuelven los halcones.
Y la mujer hizo al hombre.
Y llego la paz.
Y manana seran mujeres.
Ya nunca mas.
Yako, cazador de malditos.
Yanco.
El yaqui renegado.
Yo amo, tu amas, nosotros...
Yo dormi con un fantasma.
Yo el aventureo.
Yo pecador.
Yo quiero ser hombre.
Yo soy el asesino.
Yo soy la ley.
Yo soy muy macho.
Las zapatillas verdes.
Zindy, el nino de los pantanos.
El zorro escarlata.
El zorro vengador.

**Boscoli, Ronaldo**

L'amoure et le jour.
Barquinho.
Borboleta.
Gostei gamei.
Lagrima primeira.
Lobo bobo.
Panoramica.
Savoir pardonner.

**Carlton Film Distributors, Ltd.**

49th Parallel.
After the ball.
Alf's button afloat.
All over town.
Arsenal stadium mystery.
Ask a policeman.
Aunt Sally.
Backroom boy.
Band wagon.
Bank holiday.
Baroud.
Bees in paradise.
Black orchid.
Boys will be boys.
Britannia of Billingsgate.
Bulldog Jack.
The camels are coming.
Car of dreams.
Channel crossing.
Charley's aunt.
Checkpoint.
Chu chin chow.
The clairvoyant.
Climbing high.
Cloak without dagger.
Convict 99.
Cottage to let.
Crackerjack.
Cuckoo in the nest.
A cup of kindness.
Dangerous exile.
The day will dawn.
Delayed action.
The demi-paradise.
Dirty work.
Double exposure.
Dr. Syn.
East meets West.
The embezzler.
Evensong.
Evergreen.
Everybody dance.
Everything is thunder.
Falling for you.
Fanny by gaslight.
Father came too.
Fighting stock.
The fire raisers.
First a girl.
The Flemish farm.
Fly away Peter.
The fool and the princess.
For freedom.
Foreign affaires.
Forever England.
Freedom radio.
Friday the thirteenth.
The frozen limits.
Gangway.
Gas bags.
The gentle sex.
Gentlemen, the queen.
Ghost train.
The ghoul.
Give us the moon.
The gold express.
The good companions.
Good morning boys.
The great barrier.
The guv'nor.
Head over heels.
The heart within.
Heat wave.
Hey hey USA.
Hi gang.
Hindle wakes.
Hound of the Baskervilles.
I thank you.
I was a spy.
I'll be your sweetheart.
The iron duke.
It happened in Rome.
It's a boy.
It's love again.
It's that man again.
Jack ahoy.
Jack of all trades.
Jack's the boy.
Jew suss.
Just Smith.
King Arthur was a gentleman.
King of the damned.
King Solomon's mines.
Lady in danger.
The lady vanishes.
The lamp still burns.
Little friend.
The lodger.
London belongs to me.
Love in waiting.
Love on wheels.
Lucky number.
The man from Toronto.
Man of Aran.
Man who changed his mind.
The man who knew too much.
Me and Marlborough.
The Mikado.
Millions like us.
Miss London Ltd.
My heart is calling.
My old Dutch.
My song for you.
The naked truth.
Neutral port.
A night in Montmartre.
Non-stop New York.
OHMS
Oh Daddy.
Oh Mr. Porter.
OK for sound.
Old Bill and son.
Old bones of the river.
On the night of the fire.
One night with you.
One way out.
Owd Bob.
P C Josser.
The passing of the third floor back.
Penny and the Pownall case.
The phantom light.
A piece of cake.
Pot luck.
Princess charming.
Red ensign.
Rhodes of Africa.
Roadhouse.
Rome express.
The root of all evil.
Sabotage.
Said O'Reilly to McNab.
Sailing along.
School for secrets.
Secret agent.
The secret place.
Seven sinners.
The silver fleet.
Smash and grab.
Soldiers of the king.
Song for tomorrow.
The Spanish gardener.
Sport of kings.
Star of my night.
Stormy weather.
Strange boarders.
Suspended alibi.
Sweet devil.
Taxi for two.
That Riviera touch.
There goes the bride.
There's always a Thursday.
They knew Mr. Knight.
Things are looking up.
Third time lucky.
Thirty nine steps.
Time flies.

To the public danger.
Trouble in the air.
Tudor rose.
The tunnel.
Turkey time.
Uncensored.
Unpublished story.
A warm corner.
The way ahead.
The way we live.
We dive at dawn.
Wheel of fate.
Where there's a will.
Wild boy.
Windbag the sailor.
Windom's Way.
A window in London.
Young and innocent.
Zoo baby.

**Chronos. SEE Cogelda and Chronos**

**Clair, Mandat Rene**

Entr'acte.

**CLM and Cogelda**

Si Versailles m'etait conte.

**Cogelda**

Archimede le clochard.
Le baron de l'ecluse.
Le coeur sur la main.
Le comedien.
Le diable boiteux.
Gas-oil.
Les grandes familles.
La loi c'est la loi.
Maigret tend un piege.
Le mouton a cinq pattes.
Poisson d'Avril.
Le Roi Pandore.
La table aux creves.

**Cogelda. SEE Ariane and Cogelda**

**Cogelda. SEE CLM and Cogelda**

**Cogelda. SEE Seca and Cogelda**

**Cogelda and Ardennes**

Des gens sans importance.

**Cogelda and Ariane**

La chasse a l'homme.

**Cogelda and Arlano**

Rue des Prairies.

**Cogelda and Chronos**

Senechal le magnifique.

**Cogelda and Laetitia**

Germinal.

**Cogelda and SEDIF**

Le cas du Docteur Laurent.

**Cogelda, Ariane and Rizzoli**

Madame du Barry.

**Diana Internacional Films, S.A. de C.V.**

La comadrita.
El miedo no anda en burro.
La presidenta municipal.

**Distribution Orex Films pur le monde entier**

125 rue montmartre.
Le desordre et la nuit.

**Distribution Very pour le Monde Entier**

Les anciens de Saint Loup.
L'assassinat du pere noel.
Les disparus de Saint Agil.
L'enfer des anges.

**Filmadora Mexicana, SA**

Bajo el cielo de Mexico.

**Filmel, Pathe & TC Productions**

Les samourai.

**GC DAI. See UGC DA International (GC DAI)**

**Greenwich Film Production**

Adieu l'ami.
L'affaire Nina B.
Battement de coeur.
La blonde de Pekin.
Bob le flambeur.
Cet obscur objet du desir.
Le charme discret de la bourgeoisie.
Christine.
La course du lievre a travers les champs.
Declic et des claques.
Diva.
Du rififi a paname.
Faites sauter la banque.
Le fantome de la liberte.
Les gorilles.
La grande maffia.
Les grandes vacances.
J'ai tue Raspoutine.
Le jardinier d'Argenteuil.
Le journal d'une femme de chambre.
Le juge.
Lafayette.
Max mon amour.
Monsieur le president directeur general.
Monsieur.
Le quai des brumes.
Ran.
Soleil noir.
Le tatoue.
Le trou.

**Initial Groupe**

Mangeclous.
La thune.

**Italian Book Corporation**

Comme facette mammeta.
Funiculi funicula.
Guapparia.
O sole mio.
O surdato 'nmammurato.
Reginella.

**Laetitia. See Cogelda and Laetitia**

**Limon, Blanca Estela**

La sangre derramada.

**Lorca, Herederos de Federico Garcia**

Amor de don Perlimplin con Belisa en su jardin.
Asi que pasencinco anos: leyenda del tiempo.
Bodas de sangre.
La casa de Bernarda Alba.
Comedia sin titulo.
Dona Rosita la soltera o el lenguaje de las flores.
La doncella, el marinero y el estudiante.
El maleficio de la mariposa.
Mariana Pineda—romance popular en tres.
El paseo de Buster Keaton.
El publico.
Quimera.
Retablillo de don Cristobal.
Los titeres de cachiporra.
Viaje a la luna.
Yerma.
La zapatera prodigiosa.

**Lumiere**

2072 les mercenaires du futur.
AK.
Aimee.
L'amour en question.
Arsene Lupin contre Arsene Lupin.
Au nom du peuple italien.
L'auvergnat et l'autobus.
Belle.
Black Emmanuelle autour du monde.
Black Emmanuelle en Afrique.
Blondy.
Le bluffeur.
Cause toujours tu m'interesses.
Celles qu'on a pas eues.
Ces messieurs de la famille.
Charlie et ses deux nenettes.
Les chiens.
Confidences pour confidences.
Le conseiller.
Le docteur de ces dames.
Emmanuelle en Amerique.
Emmanuelle en Orient.
En toute innocence.
L'enfant de nuit.
Le fauve est lache.
Une femme a sa fenetre.
Frankenstein 90.
Les Gaspards.
Holocaust 2000.
Horizons sans fin.
L'important c'est d'aimer.
Je suis timide mais je me soigne.
Jeu de massacre.
Josepha.
Le joueur d'echecs.
Les marmottes.
Un monde sans pitie.
Paradis pour tous.
La part des lions.
Projection privee.
La raison d'etat.
Roulez jeunesse.
Rue del l'estrapade.
Vertige pour un tueur.

**Lumiere. See UGC DA International (UGC DAI) and Lumiere**

**Pathe**

A toi de faire mignone.
Accusee, levez-vous!
Allez France.
Les amants de verone.
L'ange de la nuit.
L'armoire volante.
Attention les enfants regardent.
Au grand balcon.
Au nom de la loi.
L'aventurier.
Bataillon du ciel.
Bethsabee.
Bolero.
Le Bonheur.
Borsalino and Co.
Le briseur de chaines.
Cadet Rousselle.
Capitaine Blomet.
Carre de valets.
Ces dames preferent le mambo.

Ces messieurs de la sante.
Chique.
Comment qu'elle est?
Les croix de bois.
Danger de mort.
Deux hommes dans la ville.
Les deux orphelines.
Les enfants du paradis.

**Pathe. See Ariane and Pathe**

**Pathe. See Filmel, Pathe & TC Productions**

**Pathe & Antenne 2**

Trois hommes a abattre.

**Pathe & Productions Raimbourg**

Le capitan.

**Pathe & T Films**

Le battant.

**Pathe Television**

Edouard et Caroline.

**Picard, Pierre**

Alexandra light sconce.

**Producteurs Associes**

Au nom de tous les miens.

**Productions Raimbourg. See Pathe & Productions Raimbourg**

**Rizzoli. See Cogelda, Ariane and Rizzoli**

**Schirmer (G.), Inc.**

3 sketches on texts of S. Shchipachev and L. Kvitko.
3 songs of Soviet pilots.
4 easy pieces in polyphonic style.
6 poems of A. Blok.
10 very easy pieces for piano.
Along Peter's road.
Amusements, or 3 collection of games and songs.
Around the Soviet country.
At Baikal.
Battle command.
The beauty of Angara.
The Book of love (no. 10).
Book of lyrics, 6 romances on poems.
The border guard.
Brave heart.
Concerto for violin and orchestra.
Dramatic march (field march) in F major.
Dramatic overture in G minor.
Dust (no. 14).
Etude (A minor) for piano (1968).
Festive march (field March) in B major.
For many years collection of romances on texts of various poets.
From the lyrics of Stephan Shchipachev, 10 romances.
From youthful years, 12 romances.
A game for piano (1968).
Glory to the Soviet pilot.
Happier than I, operetta in 2 acts (1968).
Impromptu.
In declining days 3 sketches.
Khrizis, ballet-pantomime in 3 acts, op. 65.
The Kremlin chimes (festive overture) (1970).
Lands of dejection (no. 8).
Leninist song.
Loneliness.
Maku, suite on Iranian themes for orchestra.
March of the Soviet army.
Marching song.
Message to Siberia.
Moscow.
Moscow stands.
Mountain serenade for string orchestra.
Night flowers. no. 15.
Old waltz (in the old park...).
On the comintern holiday!
On the polar sea.
On the verge, 18 romances on texts of Z. Gippius.
The poplars ripened, mass song.
Reflections, 7 verses of E. Baratynsky.
Rondo-etude for piano (1968).
Saradgef prelude and fughetta on the name Saradzhev.
Simple variations in D major, op. 43 no. 3.
The singer's secret.
Soldier's songs, suite for small symphony orchestra.
Sonata no. 3.
Sonata no. 4.
Song about Karl Marx.
Song about the locomotive.
Song and rhapsody in B minor.
Song of pride.
Song to labor.
Suite for string orchestra (1949).
Symphony for string orchestra.
Symphony no. 1 in E-flat major, op. 8 (1935).
Symphony no. 3.
Symphony no. 6, op. 23.
There will be an end to Hitler.
Two pieces.
Two romances.
USKUDAR.
Vanch.
Waltz (simple waltz) for piano (1961).
We are in polar fields.
The withered wreath, music to eight poems.
Young Mongolia.
Young soldier.

**Seca and Cogelda**

Tout l'or du monde.

**SEDIF. See Cogelda and SEDIF**

**Serraillier, Anne**

The silver sword.

**Societe du Cinema Pantheon**

Paris 1900.

**T Films. See Pathe & T Films**

**TC Productions. See Filmel, Pathe & TC Productions**

**Teledis. See UGC DA International (UGC DAI) and Teledis**

**Teshigahara Productions. See Teshigahara, Hiroshi & Teshigahara Productions**

**Teshigahara, Hiroshi & Teshigahara Productions**

Suna no onna.

**Thomann, Peter**

Stute mit fohlen.

**UGC DA International (GC DAI)**

Deux enfoires a St-Tropez.

**UGC DA International (UGC DAI)**

A bout de souffle.
A cause, a cause d'une femme.
A chacun son enfer.
A coeur joie.
A la guerre comme a la guerre.
A tout casser.
Abus de confiance.
Adorable Julia.
Adorable menteuse.
Adrien.
Les affaires sont les affaires.
L'aile ou la cuisse.
Les ailes de la colombe.
L'air de Paris.
Alexis, gentleman chauffeur.
Ali Baba et les quarante voleurs.
Allons z'enfants.
Alphaville.
L'ami de la famille.
L'ami de Vincent.
L'amor braque.
L'amour a la chaine.
L'amour a la ville.
L'amour nu.
Un ange au paradis.
Anna.
L'annee derniere a Marienbad.
Aphrodite.
Apres l'amour.
L'arbre de Noel.
Armaguedon.
L'armee des ombres.
Arrete ton char bidasse.
Asphalte.
L'attentat.
Au bonheur des dames.
Au petit bonheur.
L'Auberge rouge.
Aux frais de la princesse.
Aux yeux du souvenir.
Avant le deluge.
L'avare.
Le bal.
Barbe bleue.
La belle de Rome.
La belle Otero.
Belle que voila.
Belles, blondes et bronzees.
Bete mais discipline.
Bibi Fricotin.
Les bidasses au pensionnat.
Les bidasses s'en vont en guerre.
La Bigorne, caporal de France.
Black mic mac.
Blanche et Marie.
Boite de nuit.
La bonne occase.
Bonnes a tuer.
Bons baisers de Hong-Kong.
Bouche cousue.
Boulevard des assasins.
Le bourreau des coeurs.
Brigade anti-gangs.
Brigade des moeurs.
Brigade mondaine.
Brigade mondaine, la secte de Marrakech.
Brigade mondaine, vaudou aux Caraibes.
Les bronzes.
C'est dur pour tout le monde.
C'est pas parce qu'on a rien a dire qu'il faut fermer sa gueule.
La cage.
Calmos.
Camille Claudel.
Canicule.
Le Capitaine Fracasse.
Les carabiniers.
La carcasse et le tord cou.
Ce soir les jupons volent.
Ce soir ou jamais.
Cent briques et des tuiles.

Le cercle rouge.
Cette sacree gamine.
Le chanteur de Mexico.
Les charlots en folie dans a nous quatre cardinal.
Chateau en Suede.
Cherchez l'idole.
Cheri-bibi.
Le choc.
Le choix des armes.
Circonstances attenuantes.
Circulez y'a rien a voir!
Comme un boomerang.
Comment draguer tous les mecs.
Comment reussir en amour.
Le confident de ces dames.
Connemara.
Contes pervers.
Coplan agent secret FX18.
Coplan FX18 casse tout.
Coplan ouvre le feu a Mexico.
Coplan sauve sa peau.
Le corniaud.
Coup de torchon.
Cours prive.
Cran d'arret.
De la part des copains.
Defense de savoir.
Dernier atout.
Dernier domicile connu.
Le dernier saut.
Desarroi.
Detective.
Un Dimanche a la campagne.
Dis-moi que tu m'aimes.
Dites lui que je l'amie.
Don Juan.
Donne-moi tes yeux.
Dortoir des grandes.
Le droit d'aimer.
Drole de noce.
Du soleil plein les yeux.
La duchesse de Langeais.
Ecoute voir.
L'ecume des jours.
Emmanuelle 2.
Emmanuelle.
Entre 11 heures et minuit.
Ernest le rebelle.
Espion leve-toi.
L'esprit de famille.
Est-ce bien raisonnable?
L'ete prochain.
Une etrange affaire.
L'etrange desir de Monsieur Bard.
Les evades de la nuit.
Eve et le serpent.
Le facteur s'en va t'en guerre.
Faites-moi confiance.
Falbalas.
Une femme est une femme.
La femme flic.
Les femmes.
Les femmes d'abord.
La fete sauvage.
Le feu aux poudres.
Les feux du music hall.
La fiancee qui venait du froid.
Les filles de Grenoble.
Flic story.
Flics de choc.
Folle a teur.
Fort Saganne.
Les fougeres bleues.
La Francaise et l'amour.
Frederica.
Les freres petard.
Le gagnant.
Les galets d'etretat.
Les galettes de Pont-Aven.
La garce.
Le garde du corps.
Gervaise.
Goodbye Emmanuelle.
Le grand bazar.
Le grand carnaval.
Le grand chef.
Le grand frere.
Le grand pardon.
La grande bourgeoise.
La grande vadrouille.
Les granges brulees.
La gueule de l'autre.
Hercule contre Moloch.
L'homme a la Buick.
L'homme blesse.
L'homme presse.
L'honorable Catherine.
L'horloger de Saint-Paul.
Hors-la-loi.
Hotel des Ameriques.
Houla-houla.
L'idole.
Il y a longtemps que je t'aime.
L'ile.
Ils etaient neuf celibataires.
Ils sont grands ces petits.
Impossible ... pas Francais.
Les inconnus dans la maison.
L'invitation.
J'ai espouse une ombre.
J'ai rencontre le Pere-Noel.
Je n'aime que toi.
Les jeunes filles en uniforme.
Jeux dangereux.
Les jeux sont faits.
Josette.
Le jour de gloire.
Le jour se leve.
Le juge.
Le juge et l'assassin.
Justice est faite.
Koenigsmark.
Les libertines.
Liste noire.
Liza.
Les longs manteaux.
Ma femme s'appelle reviens.
Mademoiselle de la Ferte.
La maison sous les arbres.
Malevil.
Le mandat.
Mandrin.
Maneges.
Marche a l'ombre.
Marche pas sur mes lacets.
Le mariage de Figaro.
Le mariage du siecle.
Un mauvais fils.
Max et les ferrailleurs.
Mayerling.
Mes meilleurs copains.
Un meurtre est un meurtre.
Michel Strogoff.
Le mille pattes fait des claquettes.
Miquette et sa mere.
Miss catastrophe.
Moderato cantabile.
Moi vouloir toi.
Le mois le plus beau.
Le mors aux dents.
Les moutons de panurge.
Nick Carter et le trefle rouge.
Un nomme la Rocca.
Notre histoire.
Nous maigrirons ensemble.
Nous sommes tous des assassins.
La novice.
Nuit d'or.
Oeil pour oeil.
Les oeufs de l'autruche.
On est venu la pour s'eclater.
On n'est pas sorti de l'auberge.
On ne meurt que deux fois.
Les onze mille verges.
Operation Lady Marlene.
La palombiere.
Le passe muraille.
La patrouille des sables.
Le pere tranquille.
Phenom Carmen.
Pierrot le fou.
Pile ou face.
Les pique-assiettes.
Pizzaiolo et mozzarel.
Les poneyttes.
Pouic-pouic.
Poule et frites.
Pour cent brisques t'as plus rien.
Poussiere d'ange.
Les preferes.
Le President Haudecoeur.
La Princesse de cleves.
Prisons de femmes.
Le prix du danger.
Prunelles blues.
Le Puritan.
Qu'est-ce qui fait courir les crocodiles?
Quai des orfevres.
Le quart d'heure Americain.
Les quatre Charlots mousquetaires.
Le quatrieme pouvoir.
Quelqu'un derriere la porte.
Qui?
Le rapace.
RAS.
Relaxe toi cherie.
Le repos du guerrier.
Retour a l'aube.
Reveillon chez Bob.
Un revenant.
Rigolboche.
La rivale.
Le roi.
Les routes du sud.
Rue Barbare.
Le ruffian.
Samanka, l'ile des passions.
Le sang d'un poete.
Le sauvage.
La scoumoune.
Les seins de glace.
Une semaine de vacances.
Un si joli village.
Le soleil rouge.
Souvenirs, souvenirs.
Special police.
Les specialistes.
La symphonie pastorale.
Te marre pas . . . c'est pour rire!
Le telephone sonne toujours deux fois.
Le testament d'Orphee.
Tir groupe.
Trafic.
Le train.
Traitement de choc.
Les tricheurs.
Tristana.

La veuve Couderc.
La vie de plaisir.
La vie devant soi.
La vieille fille.
Viens chez moi j'habite chez une copine.
Voulez-vous danser avec moi?
La zizanie.

**UGC DA International (UGC DAI) and Lumiere**

Angelique et le Roy.
Angelique et le sultan.
Angelique, marquise des anges.
L'indic.
Indomptable Angelique.
Merveilleuse Angelique.

**UGC DA International (UGC DAI) and Teledis**

Chiens perdus sans collier.
Marie-Antoinette, Reine de France.
Le passage du Rhin.

**UGC DAI. SEE UGC DA International (UGC DAI)**

**UGC DAI. SEE UGC DA International (UGC DAI) and Lumiere**

**UGC DAI. SEE UGC DA International (UGC DAI) and Teledis**

**UGC UK**

Against the wind.
Another shore.
Aren't men beasts?
The baby and the battleship.
Background.
The bad companions.
Banana ridge.
Barnacle Bill.
The bells go down.
The big blockade.
The birthday present.
Black eyes.
The black hand gang.
Black limelight.
Black sheep of Whitehall.
Blackmail.
Blossom time.
Blue murder at St-Trinians.
Bond Street.
Bonnie Prince Charlie.
Brief ecstasy.
Brighton rock.
Brother Alfred.
Calling the tune.
Cape Forlorn.
Captain Bill.
The captive heart.
The cardinal.
Carry on nurse.
Carry on teacher.
The case of the smiling widow.
Chain of events.
Champagne Charlie.
Champagne.
Cheer boys cheer.
Cheer up.
Children of chance.
Cocktails.
Come on George.
Convoy.
Courtneys of Curzon Street.
The crime on the hill.
The criminal.
Cupboard love.
Dance band.
Dark eyes of London.
Davy.
Dead men are dangerous.
Death at broadcasting house.
Death drives through.
The devil's pass.
Doctor's orders.
The dominant sex.
Door with 7 locks.
Drake of England.
Dreaming.
Dual control.
East of Piccadilly.
Elizabeth of Ladymead.
Elstree calling.
The Elstree story.
Escape.
Escapement.
Eureka stockade.
Everything is rhythm.
Excuse my glove.
Facing the music.
The fallen idol.
Farewell again.
Fascination.
The feminine touch.
Fiddlers three.
Flame of love.
Flesh and blood.
Flying 55.
The flying Scot.
Flying Scotsman.
Flying squad.
For better, for worse.
For love of a queen.
For the love of Mike.
For those in peril.
Forbidden.
The foreman went to France.
The fortunate fool.
The four just men.
Freedom of the seas.
Frieda.
The gang's all here.
The gaunt stranger.
The ghost of St-Michaels.
The girl in the taxi.
Girls will be boys.
Glamorous night.
The good companions.
The goose steps out.
Great defender.
The halfway house.
Happy.
Happy is the bride.
Harmony heaven.
Headline.
Heads we go.
Heart's desire.
Here comes the sun.
The high command.
His wife's mother.
Hold my hand.
A honeymoon adventure.
Honeymoon for three.
The house of the Spaniard.
The housemaster.
Hue and cry.
The hypnotist.
I live in Grosvenor Square.
I see ice.
I spy.
The impassive footman.
Innocents of Chicago.
Inside information.
Intimate relations.
Invitation to the waltz.
It always rains on Sunday.
It happened in Paris.
It happened one Sunday.
It's a bet.
It's in the air.
Java head.
Johnny Frenchman.
Josser in the army.
Joy ride.
Juno and the paycock.
Kathleen Mavourneen.
Keep fit.
The key man.
Kind hearts and coronets.
Kiss me sergeant.
A lady mislaid.
The last chance.
The last coupon.
The last days of Dolwyn.
Laughter in paradise.
Lend me your wife.
Let George do it.
Let me explain dear.
Let's be famous.
Let's love and laugh.
Letting in the sunshine.
Life is a circus.
Living dangerously.
Looking on the bright side.
Lorna Doone.
Lost in the legion.
Love, life and laughter.
The love race.
The loves of Joanna Godden.
Luck of a sailor.
Luck of the navy.
Lucky girl.
Lucky Jim.
Lucky to me.
The mail van murder.
A man about the house.
The man from Morocco.
The man from yesterday.
The man in the sky.
Man on the run.
The man who wouldn't talk.
Manuela.
The manxman.
Maytime in Mayfair.
Men like these.
The middle watch.
Midnight menace.
Midshipman easy.
Mimi.
Mine own executioner.
The missing million.
Mister Cinders.
Money talks.
The moonraker.
Moulin Rouge.
Mr. Bill the conqueror.
Murder in Soho.
Murder.
Music hath charms.
My Irish Molly.
My learned friend.
Next to no time.
Nicholas Nickleby.
Night alone.
Night birds.
Night boat to Dublin.
Night crossing.
The night has eyes.
The night we got the bird.
Nine men.

No escape.
No kidding.
No limit.
No time for tears.
Nothing barred.
Number seventeen.
Oh boy.
Oh what a Duchess.
The old curiosity shop.
Old soldiers never die.
On secret service.
One good turn.
The oracle.
Ourselves alone.
Out of the blue.
The outcast.
The outsider.
Over she goes.
Over the garden wall.
The overlanders.
Painted boats.
Passionate stranger.
Passport to Pimlico.
Penny paradise.
The perfect alibi.
Piccadilly incident.
Pink string and sealing wax.
Play up the band.
Please teacher.
Please turn over.
Poison pen.
A political party.
Poppies of Flanders.
Premiere.
The price of folly.
Pride of the force.
The proud valley.
Queen of hearts.
Quiet weekend.
Radio lover.
Radio parade.
Raising the wind.
The rat.
Red wagon.
Return to yesterday.
Rich and strange.
The ring.
The risk.
A romance of Seville.
Royal cavalcade.
A run for your money.
Running jumping & stand still.
Sailors three.
Saints and sinners.
Sally in our alley.
Saloon bar.
San Demetrio, London.
Saraband for dead lovers.
Saturday night revue.
Save a little sunshine.
The Scotland Yard mystery.
Scott of the Antartic.
Second fiddle.
Secret lives.
The secret of the Loch.
Sensation.
Shadows.
Ships with wings.
The shiralee.
Silent dust.
The silent passenger.
Sing as we go.
Sixty glorious.
The skin game.
Sleepless nights.
The small back room.
Small hotel.
The small voice.
The solitary child.
Someone at the door.
Spare a copper.
Spring handicap.
Spring in Park Lane.
Spring meeting.
A star fell from heaven.
Strange awakening.
The strangler.
Street of shadows.
Strictly business.
Strip strip hooray.
The student's romance.
Suspected person.
Take a chance.
The tenth men.
The terror.
Their night out.
There ain't no justice.
These dangerous years.
The third man.
Thursday's child.
Tiger Bay.
Timbuctoo.
Timeslip.
Tin gods.
Tommy Atkins.
The Tommy Steele story.
Tomorrow we live.
Toni.
Tonight's the night—pass it on.
The tower of terror.
Train of events.
Trouble brewing.
Turned out nice again.
The Tyburn case.
Undercover.
Verdict of the sea.
Victoria the Great.
The Ware case.
Warn that man.
The Warren case.
Waterfront.
The weak and the wicked.
Weekend wives.
Went the day well.
What happened then?
White cliffs mystery.
White cradle inn.
The white sheik.
Whom the gods love.
The Winslow boy.
The witness.
Women aren't angels.
Wonderful things!
Yes, madam?
You made me love you.
Young man's fancy.

Dated: August 19, 1997.

**Marilyn J. Kretsinger,**

*Assistant General Counsel.*

[FR Doc. 97–22338 Filed 8–21–97; 8:45 am]

BILLING CODE 1410–30–P

federal register

Friday
August 22, 1997

# Part VII

# Department of Education

## Fund for the Improvement of Postsecondary Education—Comprehensive Program (Preapplications and Applications); Notice

## DEPARTMENT OF EDUCATION

**[CFDA Nos. 84.116A; 84.116B]**

## Fund for the Improvement of Postsecondary Education—Comprehensive Program (Preapplications and Applications)

*Subect:* Notice inviting applications for new awards for fiscal year (FY) 1998.

*Purpose of Program:* To provide grants or enter into cooperative agreements to improve postsecondary education opportunities.

*Eligible Applicants:* Institutions of higher education or combinations of such institutions and other public and private nonprofit educational institutions and agencies.

*Deadline for Transmittal of Preapplications:* October 24, 1997.

*Deadline for Transmittal of Final Applications:* March 20, 1998.

**Note:** All applicants must submit a preapplication to be eligible to submit a final application.

*Deadline for Intergovernmental Review:* May 19, 1998.

*Applications Available:* August 25, 1997.

*Available Funds:* The Administration's request for the Fund for the Improvement of Postsecondary Education for FY 1998 is $18,000,000. Of this amount, it is anticipated that approximately $5,000,000 will be available for an estimated 72 new awards under the Comprehensive Program. The Congress has not yet completed action on the FY 1998 appropriation. The estimates in this notice assume passage of the Administration's request.

*Estimated Range of Awards:* $15,000 to $150,000 per year.

*Estimated Average Size of Awards:* $70,000.

*Estimated Number of Awards:* 72.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 36 months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86.

**Priorities:**

*Invitational Priorities*

While applicants may propose any project within the scope of 20 U.S.C. 1135(a), pursuant to 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1

Projects to support new ways of ensuring equal access to postsecondary education, and to improve rates of retention and program completion, especially for low-income and under-represented minority students, whose retention and completion rates continue to lag disturbingly behind those of other groups.

Invitational Priority 2

Projects to improve campus climates for learning by creating an environment that is safe, welcoming, and conducive to academic growth for all students.

Invitational Priority 3

Projects to support innovative reforms of undergraduate, graduate, and professional curricula that improve not only what students learn, but how they learn.

Invitational Priority 4

Projects to make more productive use of resources to improve teaching and learning; and to increase learning productivity—that is, to transform programs and teaching to promote more student learning relative to institutional resources expended.

Invitational Priority 5

Projects to support the professional development of full- and part-time faculty by assessing and rewarding effective teaching; promoting new and more effective teaching methods; and improving the preparation of graduate students who will be future faculty members.

Invitational Priority 6

Projects to promote innovative school-college partnerships and to improve the preparation of K–12 teachers, in order to enhance students' preparation for, access to, and success in college.

Invitational Priority 7

Projects to disseminate innovative postsecondary educational programs which have already been locally developed, implemented, and evaluated.

**Selection Criteria**

In evaluating preapplications and final applications for grants under this program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 75.210.

*Preapplications*

In evaluating preapplications, the Secretary uses the following selection criteria:

(a) Need for Project

The Secretary reviews each proposed project for its need, as determined by the following factors:

(1) The magnitude or severity of the problem to be addressed by the proposed project.

(2) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) Significance

The Secretary reviews each proposed project for its significance, as determined by the following factors:

(1) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(2) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(3) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(4) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(c) Quality of the Project Design

The Secretary reviews each proposed project for the quality of its design, as determined by the extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(d) Quality of the Project Evaluation

The Secretary reviews each proposed project for the quality of its evaluation, as determined by the extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

*Final Applications*

In evaluating final applications, the Secretary uses the following selection criteria:

(a) Need for the Project

The Secretary reviews each proposed project for its need, as determined by the following factors:

(1) The magnitude or severity of the problem to be addressed by the proposed project.

(2) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) Significance

The Secretary reviews each proposed project for its significance, as determined by the following factors:

(1) The potential contribution of the proposed project to increase knowledge or understanding of educational problems, issues, or effective strategies.

(2) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(3) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(4) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(c) Quality of the Project Design

The Secretary reviews each proposed project for the quality of its design, as determined by the following factors:

(1) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(2) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(3) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(d) Quality of the Project Evaluation

The Secretary reviews each proposed project for the quality of its evaluation, as determined by the following factors:

(1) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

(2) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(3) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(d) The Quality of the Management Plan

The Secretary reviews each proposed project for the quality of its management plan, as determined by the plan's adequacy to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(e) Quality of Project Personnel

The Secretary reviews each proposed project for the quality of project personnel who will carry out the proposed project, as determined by the following factors:

(1) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(2) The qualifications, including relevant training and experience, of key project personnel.

(f) Adequacy of Resources

The Secretary reviews each proposed project for the adequacy of its resources, as determined by the following factors:

(1) The extent to which the budget is adequate to support the proposed project.

(2) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(3) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(4) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(5) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

For preapplications (preliminary applications) and final applications (applications), the Secretary gives equal weight to each of the selection criteria. Within each of these criteria, the Secretary gives equal weight to each of the factors.

*For Applications or Information Contact:* Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 600 Independence Avenue SW., Room 3100, ROB–3, Washington, DC 20202–5175. Telephone: (202) 358–3041 to order applications; or (202) 708–5750 between the hours of 8 a.m. and 5 p.m., Eastern time, Monday through Friday, for information. Individuals may also request applications by submitting the name of the competition, their name, and postal mailing address to the e-mail address FIPSE@ED.GOV. Individuals may obtain the application text from Internet address http://www.ed.gov/offices/OPE/FIPSE/. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

**Program Authority:** U.S.C. 1135–1135a–3.

Dated: August 19, 1997.

**David A. Longanecker,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 97–22333 Filed 8–21–97; 8:45 am]

BILLING CODE 4000–01–P

federal register

Friday
August 22, 1997

## Part VIII

# Environmental Protection Agency

**Environmental Education Grants Program; Fiscal Year 1998; Notice**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5878–7]**

## Solicitation Notice; Environmental Education Grants Program; Fiscal Year 1998

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### Section I. Overview and Deadlines

*A. Purpose of Solicitation*

This notice solicits grant proposals from education institutions, environmental and educational public agencies, and not-for-profit organizations to support environmental education projects, as defined in this notice. This solicitation notice contains all the information and forms necessary to prepare a proposal. If your project is selected as a finalist after the evaluation process is concluded, EPA will provide you with additional forms needed to process your proposal.

The Environmental Education Grants Program provides financial support for projects which design, demonstrate, or disseminate environmental education practices, methods, or techniques. This program is authorized under Section 6 of the National Environmental Education Act of 1990 (the Act) (Pub. L. 101–619). EPA anticipates funding of approximately $3 million in Fiscal year 1998, subject to the availability of funds. The Act requires that 25% of available funds go to small grants of $5,000 or less and sets a maximum limit of $250,000 for a single grant. These grants require non-federal matching funds for a minimum of 25% of the total cost of the project.

*B. What is Environmental Education?*

Environmental education: increases public awareness and knowledge about environmental issues; provides the public with the skills needed to make informed decisions and take responsible actions; enhances critical-thinking, problem-solving, and effective decision-making skills; and teaches individuals to weigh various sides of an environmental issue to make informed and responsible decisions. Environmental education does not advocate a particular viewpoint or course of action.

EPA will not fund projects that are solely designed to develop or disseminate environmental ''information.'' Environmental information provides facts or opinions about environmental issues or problems, but may not enhance critical-thinking, problem-solving, or decision-making skills. Although information is an essential element of any educational effort, environmental information is not, by itself, environmental education.

*C. Due Date and Grant Schedule*

An original proposal signed by an authorized representative plus two copies, must be mailed to EPA postmarked no later than November 15, 1997. Proposals which are postmarked after that date will not be considered for funding. EPA expects to announce the 1998 grant awards in the Spring of 1998. Applicants should anticipate project start dates no earlier than Summer and, for planning purposes, may use July 1, 1998, as the start date.

*D. Addresses for Mailing Proposals*

Proposals requesting over $25,000 in federal environmental education grant funds must be mailed to EPA headquarters in Washington, DC; proposals requesting $25,000 or less must be mailed to the EPA regional office where the project takes place. The headquarters address and the list of regional office mailing addresses by state is included at the end of this notice. Proposals submitted to EPA headquarters and regional offices will be evaluated using the same criteria, as defined in this solicitation.

*E. Funding Limits Per Proposal*

Since implementation of this grants program in 1992, there has been a great deal of public enthusiasm for developing environmental education projects. Consequently, EPA has consistently received many more applications for these grants than can be supported with available funds. The competition for grants is intense, especially at headquarters where in past years approximately 5% of proposals received have been funded. Regional offices generally fund less than 10% of proposals they receive for over $5,000 and about 15% of proposals for $5,000 or less.

Although the Act sets a maximum limit of $250,000 in environmental education grant funds for any one project, because of limited funds, EPA prefers to award smaller grants to more recipients. Proposals submitted to the EPA Regions have a better chance of being funded, in part because under Section 6(i) of the Act, EPA is required to award 25% of the total amount of its grant funds for projects which request $5,000 or less. Consequently, most regional grants are for $5,000 or less. You will significantly increase your chance of being funded if you request $5,000 or less from a Regional Office or $150,000 or less from headquarters.

### Section II. Eligible Applicants and Activities

*F. Eligible Applicants*

Any local or tribal government education agency, state government education or environmental agency, college or university, not-for-profit organization as described in Section 501 (C)(3) of the Internal Revenue Code, or noncommercial educational broadcasting entity may submit a proposal. A teacher's school district, an educator's nonprofit organization, or a faculty member's college or university may apply, but an individual teacher, educator, or faculty member may not. These terms are defined in Section 3 of the Act and 40 CFR Part 47.105. ''Tribal education agency'' means a school or community college which is controlled by an Indian tribe, band, or nation, which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians and which is not administered by the Bureau of Indian Affairs.

*G. Multiple or Repeat Proposals*

An organization may submit more than one proposal if the proposals are for different projects. No organization will be awarded more than one grant for the same project during the same fiscal year. Applicants who were awarded funds in the past may submit new proposals to expand a previously funded project or to fund an entirely different one. Each new proposal will be evaluated based upon the specific criteria set forth in this solicitation and in relation to the other proposals received in this fiscal year. Due to limited resources, EPA does not generally sustain projects beyond the initial grant period. This grant program is geared toward providing seed money to initiate new projects or to advance existing projects that are new in some way, such as to new audiences or in new locations.

*H. Eligible Activities*

As specified under the Act, environmental education activities that are eligible for funding under this program include, but are not limited to, the following:

1. Training or educating teachers, faculty, or related personnel;
2. Designing and demonstrating field methods, educational practices and techniques, including assessing environmental and ecological conditions or specific environmental issues or problems;
3. Designing, demonstrating, or disseminating environmental curricula (see next paragraph); and
4. Fostering international cooperation in addressing environmental issues and problems in the United States, Canada, and/or Mexico.

*Curricula:* Regarding Item 3 above, EPA strongly encourages applicants to demonstrate or disseminate existing environmental curricula rather than designing new curricula because experts indicate that a significant amount of quality curricula have already been developed and are under-utilized. EPA will consider funding new curricula only where the applicant demonstrates that there is a need (e.g., that existing curricula cannot be adapted well to a particular local environmental concern or audience, or existing curricula are not otherwise accessible). The applicant must specify what steps they have taken to determine this need (e.g., you may cite a conference where this need was discussed, the results of inquiries made within your community or with various educational institutions, or a research paper or other published document).

*I. Ineligible Activities*

Environmental education funds cannot be used for:
1. Construction projects;
2. Technical training of environmental management professionals;
3. Non-educational research and development; and/or
4. Environmental information projects that have no educational component, as explained in Section I(B).

Regarding Item (1) above, EPA will not fund construction activities such as the acquisition of real property (e.g., buildings) or the construction or modification of any building. EPA may, however, fund activities such as creating a nature trail or building a bird watching station as long as these items are an integral part of the environmental education project, and the cost is a relatively small percentage of the total amount of federal funds requested.

**Section III. Funding Priorities**

*J. EPA Educational Priorities*

All proposals must satisfy the definition of ''environmental education'' under Section I(B) and also satisfy one of the following EPA educational priorities. Effective this year, EPA Headquarters will fund projects for more than $25,000 in only the three categories listed below; and regional offices will fund projects of $25,000 or less in the six categories listed below. The order of the list is random and does not indicate a ranking.

Headquarters Priorities

*Health:* Educating teachers, students, parents, community leaders, or the public about human-health threats from environmental pollution, *especially as it affects children.*

*Capacity Building/Education Reform:* Increasing state, local, or tribal capacity to develop and deliver coordinated environmental education programs and/or utilizing environmental education as a catalyst to advance state, local, or tribal education reform and improvement goals.

*Community Issues:* Designing and implementing model projects to educate the public about environmental issues in their communities through community-based organizations or through print, film, broadcast, or other media.

Regional Office Priorities

*Health:* Educating teachers, students, parents, community leaders, or the public about human-health threats from environmental pollution, especially as it affects children.

*Capacity Building/Education Reform:* Increasing state, local, or tribal capacity to develop and deliver coordinated environmental education programs and/or utilizing environmental education as a catalyst to advance state, local, or tribal education reform and improvement goals.

*Community Issues:* Educating the public about environmental issues in their communities through community-based organizations or through print, film, broadcast, or other media.

*Teaching Skills:* Educating teachers, faculty, or nonformal educators about environmental issues to improve their environmental education teaching skills (e.g., through workshops).

*Career Development:* Educating students in formal or nonformal settings about environmental issues to encourage environmental careers.

*Environmental Justice:* Educating low-income or culturally-diverse audiences about environmental issues, thereby advancing environmental justice.

Definitions

The terms used above and in Section IV are defined as follows:

*New or significantly improved* includes projects that reach a specific audience or community for the first time, develop a new or improved teaching strategy, or use a new or improved method of applying existing materials.

*Wide application* pertains to a project that targets a large and diverse audience in terms of numbers or demographics; or that can serve as a model program elsewhere.

*High priority environmental issue* is one that is important to the community, state, or region being targeted by the project (e.g., one community may have significant air pollution problems which makes teaching about human health effects from it and solutions to air pollution important, while rapid development in another community may threaten a nearby wildlife habitat, thus making habitat or ecosystem protection a high priority issue).

*Partnerships* refers to the forming of a collaborative working relationship between two or more organizations such as governmental agencies, not-for-profit organizations, educational institutions, and/or the private sector. It may also refer to intra-organizational unions such as the science and art departments within a university collaborating on a project.

*Building, state, local, or tribal capacity* refers to developing or improving the infrastructure needed to enhance the coordinated delivery of environmental education at the state, local, or tribal level. This should involve a coordinated effort by the major education and environmental education providers from the respective state, locality, or tribe in the planning and implementation of the project (e.g., state education and natural resource departments, local school districts and boards, professional education and environmental education associations or coordinating councils, as well as nonprofit education and environmental education organizations) and may also include other types of organizations and private businesses as partners. Examples of how to build state, local, or tribal capacity include, but are not limited to, the following:

—Identifying and assessing needs and setting priorities;
—Evaluating current programs and links among programs;
—Developing and implementing coordinated strategic plans;
—Identifying funding sources and creating grant programs;
—Identifying existing resources, developing databases of such resources, and disseminating these resources and information;

—Establishing or enhancing on-line communications to facilitate networking among organizations;
—Ensuring sustained professional development activities; and/or
—Holding leadership seminars and other types of training.

*Education reform and improvement* refers to state, local, or tribal efforts to improve student academic achievement and to equip students with the necessary knowledge and skills to be lifelong learners. Your proposal should clearly describe what your state, local, or tribal educational reform and improvement needs and goals are, and how they relate to your environmental education project. Examples of possible reform and improvement strategies to which the proposed environmental education program might be linked include, but are not limited to, the following:

—Curricular and instructional innovations, such as more emphasis on inquiry and problem-solving;
—Learning experiences that have practical application in the real world;
—Project-based learning;
—Team building and group decision-making;
—Interdisciplinary study;
—Development of new high content and performance standards;
—Design of corresponding assessment systems and the realignment of curriculum and instructional practice to the new high standards and assessment systems;
—Use of technology in promoting learning;
—Implementation of sustained and intensive professional development activities; and/or
—Creation of family and community partnerships.

*Human health threats from environmental pollution* as used here is intended to address recommended actions stated in EPA's ''National Agenda to Protect Children's Health from Environmental Threats.'' The action reads as follows ''We call on American parents, teachers and community leaders to take personal responsibility for learning about the hazards that environmental problems pose to our children—and provide them with the information they need to help protect children from those risks at home, at school and at play. An informed, involved local community does a better job of making environmental decisions than a distant bureaucracy—and never more so than when it comes to our children. Parents, teachers and community leaders can and should play a vital, day-to-day role in learning about the particular environmental hazards their children face in their own communities, and then use that knowledge to make more informed decisions that prevent environmental health problems and protect children.'' Therefore, through this solicitation, EPA encourages environmental education projects to educate the public about environmental hazards and how to minimize human exposure to preserve good health.

*Environmental justice* refers to EPA's goal to encourage applicants to submit proposals that include efforts to target low-income and culturally-diverse populations, thereby promoting environmental justice. The term environmental justice refers to the fair treatment of people of all races, cultures, and income with respect to the development, implementation and enforcement of environmental laws, regulations, and policies. Fair treatment means that no racial, ethnic, or socioeconomic group should bear a disproportionate share of the negative environmental consequences that might result from the operation of industrial, municipal, and commercial enterprises and from the execution of federal, state, local, and tribal programs and policies. An example would be an education project directed at an environmental problem with a disproportionately high and adverse human health or environmental impact in a low-income or culturally-diverse community.

## Section IV. Requirements for Proposals and Matching Funds

### *K. Contents of Proposal*

The proposal must contain two standard federal forms, a work plan with a detailed budget, and appendices, as described below:

*Federal Forms: Application for Federal Assistance* (SF–424) *and Budget Information* (SF–424A): The SF–424 and SF–424A are required for all federal grants and must be submitted as part of your proposal. These forms, along with instructions and samples, are included at the end of this notice. Only finalists will be asked to submit additional federal forms needed to process their proposal.

*Work Plan:* A work plan describes your proposed project. It must include and be formatted according to all five sections described below. When the proposals are scored, the total number of points possible for each proposal is 100. Each of the following five sections of the work plan are assigned points which add up to 90. Reviewers will be given the flexibility to provide up to 10 extra points for exceptional projects based upon the overall quality of the proposal, evidence that EPA's priorities will be effectively advanced by the project and that it will provide a good return on the investment. Examples of factors for extra points include strong partnerships, creative use of resources, and sustainability of the project.

(1) *Project Summary:* Provide an overview of your entire project in this format. The summary must briefly cover the following and fit on one page:

(a) *Organization:* Describe your organization (and list your key partners for this grant, if applicable). Partnerships are encouraged and considered to be a major factor in the success of projects.

(b) *Summary Statement:* Provide an overview of your project that explains the concept and your goals and objectives. This should be a very basic explanation in layman's terms to provide a reviewer with an understanding of the purpose and expected outcome of your educational project.

(c) *Educational Priority:* Identify which EPA priority listed in Section III you will address, such as education reform. Proposals may address several educational priorities, however, EPA cautions against losing focus on projects. Evaluation panels often select projects with a clearly defined purpose, rather than projects that attempt to address multiple priorities at the expense of a quality outcome.

(d) *Audience:* Describe the demographics of your target audience including the number and types you expect to reach, such as, teachers, students, specific grade levels, ethnic composition, members of the general public, etc.

(e) *Delivery Method:* Explain how you will reach your audience, such as workshops, conferences, interactive programs, etc.

(f) *Costs:* List the types of activities for which EPA funds will be spent. The project summary will be scored on how well you provide an overview of your entire project using the topics stated above.

Project Summary Maximum Score: 10 points

(2) *Project Description:* Explain how your proposed project meets these mandatory requirements for funding:

(a) Addresses a high priority environmental issue, such as clean air, ecosystem protection, or cross-cutting issues; and the importance of the issues to your community, state or region;

(b) Addresses at least one of EPA's educational priorities listed in Section

III, such as education reform or children's health;

(c) Is new or significantly improved; and

(d) Has the potential for wide application.

Describe precisely what your project will achieve—how, when, why, and who will benefit. Explain the strategy, objectives, activities, delivery methods, and outcomes in enough detail to answer questions in a reviewer's mind. Include a ''timeline'' to link your activities and products to a clear project schedule and lay them out over the months of your budget period.

This subsection will be scored on how clearly you describe your project and how effectively your project meets the following five criteria: (1) addresses an EPA educational priority; (2) establishes realistic goals and objectives; (3) identifies its target audience and demonstrates an understanding of the needs of that audience, including cultural diversity where appropriate; (4) uses an effective delivery method for reaching the target audience, and also has the potential for wide application; and (5) demonstrates that it uses or produces quality educational products or methods which teach critical-thinking, problem-solving, and decision-making skills.

Project Description Maximum Score: 50 points (10 points for each of the five elements identified above)

(3) *Project Evaluation:* Explain how you will ensure that you are meeting the goals and objectives of your project. Evaluation plans may be quantitative and/or qualitative and may include, for example, surveys, observation, or outside consultation.

The project evaluation will be scored on the extent to which your plan will: (a) Measure the project's effectiveness; and b) apply evaluation data gathered during your project to strengthen it.

Project Evaluation Maximum Score: 10 Points (5 Points for Each of the two Elements Identified Above)

(4) *Budget:* Describe how EPA funds and non-federal matching funds will be used for personnel/salaries, fringe benefits, travel, equipment, supplies, contract costs, and indirect costs. Include a table which lists each major proposed activity, and the amount of EPA funds and/or matching funds that will be spent on each activity. Smaller grants with uncomplicated budgets may have a table that lists only a few activities. Budget periods not to exceed one-year are preferred by EPA for all grants and are mandatory for small grants of $5,000 or less. Budget periods for larger grants cannot exceed two-years.

Please Note the following funding limitations:

—Indirect costs may be requested only if your organization has already negotiated and received a currently valid ''indirect cost rate'' from a cognizant federal agency.

—Funds for salaries and fringe benefits may be requested only for those personnel who are directly involved in implementing the proposed project and whose salaries and fringe benefits are directly related to specific products or outcomes of the proposed project. EPA strongly encourages applicants to request competitive amounts of funding for salaries and fringe benefits.

—EPA will not fund the acquisition of real property (including buildings) or the construction or modification of any building.

*Matching Funds Requirement:* Non-federal matching funds of *at least* 25% of the *total cost* of the project are required, and EPA encourages matching funds of greater than 25%. The 25% match may be provided by the applicant or another organization or institution, and may be provided in cash or by in-kind contributions and other non-cash support. In-kind contributions often include salaries or other verifiable costs and this value must be carefully documented. In the case of salaries, applicants may use either minimum wage or fair market value.

*Important:* The matching non-federal share is a percentage of the entire cost of the project. For example, if the 75% federal portion is $5,000, then the entire project should, at a minimum, have a budget of $6,667, with the recipient providing a contribution of $1,667. To assure that your match is sufficient, simply divide the Federally requested amount by three. Your match must be at one-third of the requested amount to be sufficient. The proposed match, including the value of in-kind contributions, is subject to negotiation with EPA. All grants are subject to federal audit.

*Other Federal Funds:* You may use other federal funds in addition to those provided by this program, but only for different activities. You may not use any federal funds to meet any part of the required 25% match described above, unless it is specifically authorized by statute. If you have already been awarded federal funds for a project for which you are seeking additional support from this program, you must indicate those funds in the budget section of the work plan. You must also identify the project officer, agency, office, address, phone number, and the amount of the federal funds.

This subsection will be scored on: (a) How well the budget information clearly and accurately shows how funds will be used; and (b) whether the funding request is reasonable given the activities proposed.

Budget Maximum Score: 10 Points (5 Points for Each of the two Elements Identified Above)

(5) *Appendices:* Key Personnel and Letters of Commitment: Attach one or two page resumes for up to three key personnel implementing the project. If there are partners, include one page letters of commitment from partners explaining their role in the proposed project. Do *not* include letters of endorsement or recommendation; they will not be considered in evaluating proposals. Please do not submit other appendices or attachments such as video tapes or sample curricula.

This subsection will be scored based upon whether resumes of key personnel are included and whether the key personnel are qualified to implement the proposed project. In addition, the score will reflect whether letters of commitment are included (if partners are used) and the extent to which a firm commitment is made.

Appendices Maximum Score: 10 Points

*L. Page Limits*

Your work plan may include the following number of pages for federal fund requests for:

1. *$25,000 or less:* EPA prefers a work plan of 3 pages, but will accept up to 5 pages.

2. *Above $25,000:* a work plan of up to 10 pages.

These page limits apply only to the work plan (i.e., the Summary, Project Description, Project Evaluation and Budget), not the Appendices. ''One page'' refers to one side of a single-spaced typed page. The pages must be letter sized (8½ X 11 inches), with normal type size (10 or 12 cpi) and at least 1 inch margins. To conserve paper, please provide double-sided copies of the proposal.

*M. Submission Requirements and Copies*

The applicant must submit one original and two copies of the proposal (a signed SF–424, an SF–424A, a work plan, a budget, and appendices). Do not include other attachments such as cover letters, tables of contents, or appendices other than resumes and letters of commitment. The SF–424 should be the first page of your proposal and must be signed by a person authorized to receive funds. Blue ink for signatures is

preferred. Proposals must be reproducible; they should not be bound. They should be stapled or clipped once in the upper left hand corner, on white paper, and with page numbers. Mailing addresses are listed at the end of this notice.

*N. Regulatory References*

The Environmental Education Grant Program Regulations, published in the **Federal Register** on March 9, 1992, provide additional information on EPA's administration of this program (57 Federal Register 8390; Title 40 CFR, Part 47 or 40 CFR Part 47). Also, EPA's general assistance regulations at 40 CFR Part 31 applies to state, local, and Indian tribal governments and 40 CFR Part 30 applies to all other applicants such as nonprofit organizations.

## Section V. Review and Selection Process

*O. Proposal Review*

Proposals will be reviewed in two phases—the screening phase and the evaluation phase. During the screening phase, proposals will be reviewed to determine whether they meet the basic requirements of this notice. Only those proposals which meet all of the basic requirements will enter the evaluation phase of the review process. During the evaluation phase, proposals will be evaluated based upon the quality of their work plans. Reviewers conducting the screening and evaluation phases of the review process will include EPA officials and external environmental educators approved by EPA. At the conclusion of the evaluation phase, the reviewers will score work plans based upon the scoring system identified in Section IV.

*P. Final Selections*

After individual projects are evaluated and scored by reviewers, as described under Section IV, EPA officials in the regions and at headquarters will select a diverse range of finalists from the highest ranking proposals. In making the final selections, EPA will take into account the following:

1. Effectiveness of collaborative activities and partnerships, as needed to successfully develop or implement the project;
2. Environmental and educational importance of the activity or product;
3. Effectiveness of the delivery mechanism (i.e., workshop, conference, etc.);
4. Cost effectiveness of the proposal; and
5. Geographic distribution of projects.

*Q. Notification to Applicants*

Applicants will receive a confirmation that EPA has received their proposal once EPA has received all proposals and entered them into a computerized database, usually within two months of receipt. EPA will notify applicants again after awards have been announced.

## Section VI. Grantees Responsibilities

*R. Responsible Recipients*

The Act requires that projects be performed by the applicant or by a person satisfactory to the applicant and EPA. All proposals must identify any person other than the applicant who will assist in carrying out the project. These individuals are responsible for receiving the grant award agreement from EPA and ensuring that all grant conditions are satisfied. Recipients are responsible for the successful completion of the project.

*S. Incurring Costs*

Grant recipients may begin incurring costs on the start date identified in the EPA grant award agreement. Activities must be completed and funds spent within the time frames specified in the document.

*T. Reports and Work Products*

Specific reporting requirements will be identified in the EPA grant award agreement. Grant recipients with a federal environmental education grant greater than $25,000 will be required to submit semi-annual progress reports; and grantees for less may be required to submit semi-annual reports. Grant recipients will submit two copies of their final report and two copies of all work products to the EPA project officer within 30 days after the expiration of the budget period. This report will be accepted as the final report unless the EPA project officer notifies you that changes must be made.

EPA plans to assemble a library of final reports and work products at headquarters in Washington, D.C. EPA also plans to evaluate these final reports and work products and disseminate those that serve as model programs.

## Section VII. Other Information and Mailing List

*U. Internet Access*

You can view and download this solicitation notice, a list of EPA environmental education contacts, and descriptions of past projects funded under this program and information on other education resource materials from: ''http://eelink.umich.edu'' or ''http://www.nceet.snre.umich.edu/grant.html''

If you receive this solicitation electronically and if the standard federal forms for Application (SF–424) and Budget (SF–424A) are not available or cannot be printed, you may locate them the following ways: The **Federal Register** in which this Notice is published contains the forms and is available to be copied at many public libraries; many federal offices use the forms and have copies available; or you may call or write the appropriate EPA office listed at the end of this Notice.

*V. Other Funding*

Please note that this is a very competitive grants program. Limited funding is available and many grant applications are expected to be received. Therefore, the Agency cannot fund all applications. If your project is not funded, a listing of other EPA grant programs may be found in the Catalog of Federal Domestic Assistance. This publication is available at local libraries, colleges, or universities.

*W. Classification of Notice*

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

Under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements contained in this solicitation and has assigned OMB control number 2030–0006.

*X. Mailing List for 1999 Environmental Education Grants*

EPA develops an entirely new mailing list for the grants program each year. The Fiscal Year 1999 mailing list will include all applicants who submitted proposals for 1998 and anyone who specifically requests the 1999 Solicitation Notice. If you do not submit a proposal for 1998 and wish to be added to our 1999 mailing list, please mail your request—please do not telephone—along with your name, organization, address, and phone number to: U.S. Environmental Protection Agency, Environmental Education Division (1707), Environmental Education Grants Program (FY 1999), 401 M Street, S.W., Washington, D.C. 20460.

Dated: August 15, 1997.

**Diane Esanu,**

*Acting Associate Administrator, Office of Communications, Education, and Public Affairs.*

## Mailing Addresses and Information

Applicants who need more information about this grant program or clarification about specific requirements in this solicitation notice, may contact the EPA Environmental Education Division in Washington, D.C. for grant requests of more than $25,000 or the EPA regional office for grant requests of $25,000 or less.

*U.S. EPA Headquarters—For Proposals Requesting More Than $25,000*

*Mail proposals to:* U.S. EPA, Env Ed Grants, Environmental Education Division (1707), Office of Communications, Education, and Public Affairs, 401 M Street, S.W., Washington, D.C. 20460.
*Information:* Diane Berger and Sheri Jojokian, Environmental Education Specialists, 202–260–8619.

*U.S. EPA Regional Offices—For Proposals Requesting $25,000 or Less*

Mail the proposal to the Regional Office where the project will take place, rather than where the applicant is located, if these locations are different.

EPA Region I—CT, ME, MA, NH, RI, VT

*Mail proposals to:* U.S. EPA, Region I, Env Ed Grants, Grants Management Office, JFK Federal Building (MGM), Boston, MA 02203.
*Hand-deliver to:* One Congress Street, 11th Floor Mail Room, Boston, MA (M–F 8am–4pm).
*Information:* Maria Pirie, EE Coordinator, 617–565–9447, Angela Bonarrigo, 617–565–2501.

EPA Region II—NJ, NY, PR, VI

*Mail proposals to:* U.S. EPA, Region II, Env Ed Grants, Grants and Contracts Management Branch, 290 Broadway, 27th Floor, New York, NY 10007–1866.
*Information:* Teresa Ippolito, EE Coordinator, 212–637–3671.

EPA Region III—DC, DE, MD, PA, VA, WV

*Mail proposals to:* U.S. EPA, Region III, Env Ed Grants, Grants Management Section (3PM70), 841 Chestnut Street, Philadelphia, PA 19107.
*Information:* Nan Ides, EE Office, 215–566–5546.

EPA Region IV—AL, FL, GA, KY, MS, NC, SC, TN

*Mail proposals to:* U.S. EPA, Region IV, Env Ed Grants, Office of Public Affairs, 61 Forsyth Street, S.W., Atlanta, GA 30303.
*Information:* Fred Thornburg, EE Office, 404–562–8317.

EPA Region V—IL, IN, MI, MN, OH, WI

*Mail proposals to:* U.S. EPA, Region V, Env Ed Grants, Grants Management Section (MC–10J), 77 West Jackson Boulevard, Chicago, IL 60604.
*Information:* Julie Moriarty, EE Office, 312–353–5789, Suzanne Saric, EE Coordinator, 312–353–3209.

Region VI—AR, LA, NM, OK, TX

*Mail proposals to:* U.S. EPA, Region VI, Env Ed Grants (6XA), 1445 Ross Avenue, Dallas, TX 75202.
*Information:* Jo Taylor, EE Coordinator, 214–665–2200.

Region VII—IA, KS, MO, NE

*Mail proposal to:* U.S. EPA, Region VII, Env Ed Grants, Grants Administration Division, 726 Minnesota Avenue, Kansas City, KS 66101.
*Information:* Rowena Michaels, EE Coordinator, 913–551–7003.

Region VIII—CO, MT, ND, SD, UT, WY

*Mail proposals to:* U.S. EPA, Region VIII, Env Ed Grants, 999 18th Street (80C), Denver, CO 80202–2466.
*Information:* Cece Forget, EE Coordinator, 303–312–6605.

Region IX—AZ, CA, HI, NV, American Samoa, Guam, Northern Marianas

*Mail proposals to:* U.S. EPA, Region IX, Env Ed Grants, Office of Communications and Government Relations (CGR–3), 75 Hawthorne Street, San Francisco, CA 94105.
*Information:* Matt Gaffney, Office of Communications and Government Relations (OCGR), 415–744–1166.

Region X—AK, ID, OR, WA

*Mail proposals to:* U.S. EPA,

Region X, Env Ed Grants, Public Information Center, 1200 Sixth Avenue (EXA–142A), Seattle, WA 98101.

*Information:* Sally Hanft, EE Coordinator, 1–800–424–4EPA, 206–553–1207.

## Instructions for the SF 424—Application

This is a standard Federal form to be used by applicants as a required facesheet for the Environmental Education Grants Program. These instructions have been modified for this program only and do not apply to any other Federal program.

1. Check the box marked ''Non-Construction'' under ''Application''.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If you are currently funded for a related project, enter present Federal identifier number. If not, leave blank.
5. Legal name of applicant organization, name of primary organizational unit which will undertake the grant activity, complete address of the applicant organization, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. You can obtain this number from your payroll office. It is the same Federal Identification Number which appears on W–2 forms. If your organization does not have a number, you may obtain one by calling the Taxpayer Services number for the IRS.
7. Enter the appropriate letter in the space provided.
8. Check the box marked ''new'' since all proposals must be for new projects.
9. Enter U.S. Environmental Protection Agency.
10. Enter 66.951 Environmental Education Grants Program.
11. Enter a brief descriptive title of the project.
12. List only the largest areas affected by the project (e.g., State, counties, cities).
13. Self-explanatory (See Section IV (K) (4) in Notice).
14. In (a) list the Congressional District where the applicant organization is located; and in (b) any District(s) affected by the program or project. If your project covers many areas, several congressional districts will be listed. If it covers the entire state, simply put in STATEWIDE. If you are not sure about the congressional district, call the County Voter Registration Department.
15. Amount requested or to be contributed during the funding/budget period by each contributor. Line (a) is for the amount of money you are requesting from EPA. Lines (b-e) are for the amounts either you or another organization are providing for this project. Line (f) is for any program income which you expect will be generated by this project. Examples of program income are fees for services performed, income generated from the sale of a brochure produced with the grant funds, or admission fees to a conference financed by the grant funds. The total of lines (b-e) must be at least 25% of line (g), as this grant has a match requirement of 25% of the TOTAL ALLOWABLE PROJECT COSTS. Value

of in-kind contributions should be included on appropriate lines as applicable. If both basic and supplemental amounts are included, show breakdown on an attached Budget sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Check (b) (NO) since your application does not have to be sent through the state clearinghouse for review.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. The authorized representative is the person who is able to contract or obligate your agency to the terms and conditions of the grant. (Please sign with blue ink.) A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

**Instructions for the SF–424A-Budget**

This is a standard Federal form used by applicants as a basic budget. These instructions have been modified for this grant program only and do *not* apply to any other Federal Program.

Do NOT fill in Section A—Budget Summary.

Complete Section B—Budget Categories—Columns (1), (2) and (5).

For each major program, function or activity, fill in the total requirements for funds by object class categories.

All applications should contain a breakdown by the relevant object class categories shown in Lines (a-h): Columns (1), (2), and (5) of Section B. Include Federal funds in Column (1) and non-Federal (matching) funds in Column (2), and put the totals in Column (1) and non-Federal (matching) funds in Column (2), and put the totals in Column (5). Many applications will not have entries in all object class categories.

Line 6i—Show the totals of lines 6a through 6h in each column.

Line 6j—Show the amount of indirect costs. (To be applicable, you must have a currently valid ''indirect cost rate'' from a Federal agency.)

Line 6k—Enter the total of amounts of Lines 6i and 6j.

Line 7—Program Income—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Describe the nature and source of income in the detailed budget description.

Detailed Itemization of Costs: The proposal must also contain a detailed budget description as specified in the Notice in Section IV (K) (4), and should conform to the following:

*Personnel:* List all participants in the project by position title. Give the percentage of the budget period for which they will be fully employed on the project (e.g., half-time for half the budget period equals 25 percent, full-time for half the budget period equals 50 percent, etc.). Give the annual salary and the total cost over the budget period for all personnel listed.

*Travel:* If travel is budgeted, show destination and purpose of travel as well as costs.

*Equipment:* Identify all equipment to be purchased and for what purpose it will be used.

*Supplies:* If the supply budget is less than 2% of total costs, you do not need to itemize.

*Contractual:* Specify the nature and cost of such services. EPA may require review of contracts for personal services prior to their execution to assure that all costs are reasonable and necessary to the project.

*Construction:* Not allowable for this program.

*Other:* Specify all other costs under this category.

*Indirect Costs:* Provide an explanation of how indirect charges were calculated for this project.

BILLING CODE 6560–50–P

OMB Approval No. 0348-0043

# APPLICATION FOR FEDERAL ASSISTANCE

SAMPLE

| | |
|---|---|
| 2. DATE SUBMITTED: 11-1-97 | Applicant Identifier |
| 3. DATE RECEIVED BY STATE | State Application Identifier |
| 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☒ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: Smith County School System

Organizational Unit: Office of Teacher Development

Address (give city, county, state, and zip code): 100 Green Street (Smith County) Belle View, VA 12345

Name and telephone number of the person to be contacted on matters involving this application (give area code): Willie Doitt (123)456-7890

6. EMPLOYER IDENTIFICATION NUMBER (EIN): 1 2 – 3 4 5 6 7 8 9

7. TYPE OF APPLICANT: (enter appropriate letter in box) [B]
A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY: U.S. Environmental Protection Agency

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 6 6 . 9 5 1
TITLE: Environmental Education

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
"Greening Green County"
Teacher Training Environmental Workshop:
Water monitoring to protect health.

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.): 3 counties: Green, Wythe and Smith

13. PROPOSED PROJECT:

| Start Date | Ending Date |
|---|---|
| 7-1-98 | 6-30-99 |

14. CONGRESSIONAL DISTRICTS OF:

| a. Applicant | b. Project |
|---|---|
| 02 | 1, 02, 03 |

15. ESTIMATED FUNDING:

| | |
|---|---|
| a. Federal | $ 5,000 .00 |
| b. Applicant | $ 1,667 .00 |
| c. State | $ .00 |
| d. Local | $ .00 |
| e. Other | $ .00 |
| f. Program Income | $ .00 |
| g. TOTAL | $ 6,667 .00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____
b. NO. ☒ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☒ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
|---|---|---|
| Pat Doe | Superintendent of Schools | (123)456-0987 |

d. Signature of Authorized Representative: Pat Doe
e. Date Signed: 10-31-97

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

SAMPLE

OMB Approval No. 0348-0044

## BUDGET INFORMATION — Non-Construction Programs

### Section A — BUDGET SUMMARY

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. Totals | | $ | $ | $ | $ | $ |

### SECTION B — BUDGET CATEGORIES

| 6. Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | Total (5) |
|---|---|---|---|---|---|
| | (1) Federal Funds | (2) Non-Federal Match | (3) | (4) | |
| a. Personnel | $ 2,000 | $ 800 | $ | $ | $ 2,800 |
| b. Fringe Benefits | 200 | 100 | | | 300 |
| c. Travel | 200 | | | | 200 |
| d. Equipment | | | | | |
| e. Supplies | 1,200 | 500 | | | 1,700 |
| f. Contractual | 500 | | | | 500 |
| g. Construction | XXXXXXXXXXX | XXXXXXXXXXX | | | XXXXXXXXXXX |
| h. Other | 900 | 267 | | | 1,167 |
| i. Total Direct Charges (sum of 6a - 6h) | 5,000 | 1,667 | | | 6,667 |
| j. Indirect Charges | | | | | |
| k. TOTALS (sum of 6i and 6j) | $ 5,000 | $ 1,667 | $ | $ | $ 6,667 |
| 7. Program Income | $ | $ | $ | $ | $ |

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

OMB Approval No. 0348-0043

# APPLICATION FOR FEDERAL ASSISTANCE

| | |
|---|---|
| 2. DATE SUBMITTED | Applicant Identifier |
| 3. DATE RECEIVED BY STATE | State Application Identifier |
| 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

1. TYPE OF SUBMISSION:

| Application | Preapplication |
|---|---|
| ☐ Construction | ☐ Construction |
| ☒ Non-Construction | ☐ Non-Construction |

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, state, and zip code)*:

Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Non-Profit
O. Other (Specify) _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

9. NAME OF FEDERAL AGENCY:
U.S. ENVIRONMENTAL PROTECTION AGENCY

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 6 6 . 9 5 1

TITLE: ENVIRONMENTAL EDUCATION GRANT

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:

| Start Date | Ending Date |
|---|---|
| | |

14. CONGRESSIONAL DISTRICTS OF:

| a. Applicant | b. Project |
|---|---|
| | |

15. ESTIMATED FUNDING:

| | |
|---|---|
| a. Federal | $ .00 |
| b. Applicant | $ .00 |
| c. State | $ .00 |
| d. Local | $ .00 |
| e. Other | $ .00 |
| f. Program Income | $ .00 |
| g. TOTAL | $ .00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☒ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
|---|---|---|
| d. Signature of Authorized Representative | | e. Date Signed |

Previous Editions Not Usable

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Prescribed by OMB Circular A-102

**Authorized for Local Reproduction**

OMB Approval No. 0348-0044

## BUDGET INFORMATION — Non-Construction Programs

**Section A — BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. Totals | | $ | $ | $ | $ | $ |

**SECTION B — BUDGET CATEGORIES**

| 6. Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | Total (5) |
|---|---|---|---|---|---|
| | (1) Federal Funds | (2) Non-Federal Match | (3) | (4) | |
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | XXXXXXXXXXX | XXXXXXXXXXX | | | XXXXXXXXXXX |
| h. Other | | | | | |
| i. Total Direct Charges (sum of 6a - 6h) | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS (sum of 6i and 6j) | $ | $ | $ | $ | $ |
| | | | | | |
| 7. Program Income | $ | $ | $ | $ | $ |

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[FR Doc. 97–22365 Filed 8–21–97; 8:45 am]
BILLING CODE 6500–50–PC

federal register

Friday
August 22, 1997

# Part IX

# Environmental Protection Agency

## 40 CFR Part 86

## Extension of Interim Revised Durability Procedures for Light-Duty Vehicles and Light-Duty Trucks; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 86**

**[AMS–FRL–5879–2]**

## Extension of Interim Revised Durability Procedures for Light-Duty Vehicles and Light-Duty Trucks

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Today's action extends the applicability of light duty vehicle and light duty truck durability procedures to beyond the 1998 model year.

On January 12, 1993, EPA published a final rule establishing interim durability procedures used for demonstrating compliance with light duty vehicle and light duty truck emission standards, applicable in model years 1994–1996 only. On July 18, 1994, EPA published a direct final rule extending the applicability of the original rule to the end of the 1998 model year. Today's final rule extends the applicability of those durability procedures indefinitely. The Agency intends to conduct a separate rulemaking to implement a long-term durability program; however, such an action will be linked to other actions as part of a broad-based streamlining initiative for all vehicle emission compliance activities. It is difficult to predict with any precision when this subsequent action will occur. The Agency currently estimates that new compliance regulations will be promulgated such that they would become effective no earlier than the 2000 model year. Because the current durability regulations expire at the end of the 1998 model year, failure to adopt today's action would result in less effective and inefficient durability regulations beginning with the 1999 model year. The Agency believes that it is appropriate to extend indefinitely the existing interim procedures because so doing addresses lead time concerns for model year 1999 and beyond, accounts for the uncertainty of the anticipated revised compliance regulations and adds no new requirements, but rather simply allows the continuation of the current program.

**DATES:** This final rule is effective September 22, 1997.

**ADDRESSES:** Materials relevant to this final rule have been placed in Docket No. A–93–46. Additional documents of relevance may be found in Docket No. A–90–24. The docket is located at the above address in room M–1500, Waterside Mall, and may be inspected weekdays between 8:30 a.m. and noon, and between 1:30 p.m. and 3:30 p.m. A reasonable fee may be charged by EPA for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** Linda Hormes, Vehicle Programs and Compliance Division, U.S. Environmental Protection Agency, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone (313) 668–4502.

**SUPPLEMENTARY INFORMATION:**

The preamble and regulatory language are also available electronically from the EPA internet Web site. This service is free of charge, except for any cost you already incur for internet connectivity. The electronic version of this final rule is made available on the day of publication on the primary Web site listed below. The EPA Office of Mobile Sources also publishes these notices on the secondary Web site listed below.

Internet (Web)

http://www.epa.gov/docs/fedrgstr/EPA-AIR/ (either select desired date or use Search feature)

http://www.epa.gov/OMSWWW/ (look in What's New or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

### I. Background

On January 12, 1993, the Agency published interim procedures for motor vehicle manufacturers to use in demonstrating compliance with emission standards for light-duty vehicles and light-duty trucks (58 FR 3994). That rule, referred to as the ''RDP I'' rule, made the interim procedures applicable to model years 1994 through 1996, but not thereafter. The Agency now plans to revise the RDP I interim procedures through a separate rulemaking in conjunction with other activities associated with a compliance initiative currently being undertaken by the Agency.

The Agency initially planned to promulgate a separate durability regulation, hereafter referred to as ''RDP II'' which was to become effective beginning with the 1997 model year. However, that became impractical due to lead time constraints for manufacturers wishing to certify vehicles in that model year and the uncertainty that sufficient lead time existed for implementation in the 1998 model year as well. Consequently, the Agency promulgated a direct final rule which extended the applicability of the RDP I interim rulemaking through model year 1998 (59 FR 36368). This was intended to provide manufacturers with timely notice of the regulations applicable for certifying vehicles through model year 1998 while EPA continued work on preparing and finalizing further technical and procedural improvements to the RDP II program. While work on the RDP II rule proceeded, various new events and actions precluded the timely completion of this project. In particular, in 1995 the Agency undertook an initiative to revise the current vehicle compliance program, including the durability protocols. The Agency is currently considering promulgating regulations which would become effective with the 2000 model year. Because, as of today's date, these regulations are still in the pre-proposal stage, it is not possible to provide manufacturers with a firm effective date. Therefore, the Agency believes today's action of indefinitely extending the existing RDP I regulations will satisfy the industry's need to plan its durability programs and will retain the current durability options which can be improved upon in future actions.

The rule being adopted today was previously promulgated as a direct final rule (61 FR 58618), but due to adverse comment submitted to EPA, the DFR was withdrawn (62 FR 11082) and a proposal was simultaneously published (62 FR 11138).

### II. Comments and EPA Response

*A. Comments*

A total of six written comments were received during the public comment period for the NPRM. Three were from the automotive manufacturing industry, one from a group of associations representing an industry commonly referred to the as the automotive ''aftermarket'', that is, manufacturers of automotive parts and components to be used as replacements in existing cars and trucks, one from the Ethyl Corporation, a manufacturer of fuel additives for use in gasoline, and one from Envirotest Systems, a provider of centralized vehicle emissions testing programs for states and municipalities.

The automotive industry comments were from Ford, General Motors and a joint submission from Association of International Automobile Manufacturers (AIAM) and American Automobile Manufacturers Association (AAMA), which represent the majority of automotive manufacturers with U.S. markets. All of the automotive

comments were consistently supportive of the extension of the RDP I regulations. GM and Ford specifically commented that the final rule should be promulgated as soon as possible due to their plans to utilize RDP I procedures in the 1999 model year. All automotive comments supported the indefinite extension of RDP I because of the uncertainty of the implementation date for the new certification compliance regulations planned by the Agency.

All automotive comments expressed a concern that the manufacturer-derived durability processes allowed under the RDP I regulation be held by EPA as proprietary and confidential, as allowed under section 7542(c) of the Clean Air Act. GM expressed the opinion that their alternative durability processes constitute trade secrets and commercial information within the meaning of Section 1905 of Title 18 of the United States Code and is therefore entitled to confidential treatment pursuant to section 208(c) of the Clean Air Act, Sections 552(b)(4) and 552(c)(4) of the USC (Exemption 4 of the Freedom of Information Act), and Part 2, of Title 40 of the Code of Federal Regulations.

Envirotest Systems stated that it did ''not oppose EPA's proposal''. But it requested that EPA ''provide assurance to the public that information describing the nature of any undefined test procedures upon which the Agency's certification decisions are based [be] made available to the public upon request'', citing EPA's Freedom of Information Act regulations which require information which is emission data to not be considered confidential. It also expressed ''strong reservations'' about any plans the Agency may have for replacing the I/M 240 Inspection/Maintenance program with a program which inspected the vehicles' on-board diagnostic (OBD II) systems to determine pass fail emission status.

Ethyl Corporation, represented by Hunton & Williams, similarly stated that it did ''*not* oppose *per se* reliance upon the range of test procedures which would be authorized by EPA's proposal''. However, it presented three arguments for requiring the public release of certain information which manufacturers may have provided to EPA during the RDP I process. First, Ethyl argued that any information that EPA relies upon to support its certification decisions cannot be deemed confidential, because such decisions are subject to judicial review, and any information used to make certification decisions which is relevant to that decision must be subject to public review. Second, similarly to Envirotest, Ethyl claimed that any information qualifying as ''emission data'' or a ''standard or limitation'' under the Clean Air Act is not eligible for confidential treatment, citing the EPA FOIA regulations at 40 CFR 2.301. The third argument Ethyl presents is that General Motors, in its comments on this rulemaking, has not stated valid grounds to support a trade secret claim, under the FOIA requirements at 40 CFR 2.204(e)(4)(viii).

The consortium of aftermarket parts associations opposed the proposal because it did not require ''that a description of [certain manufacturer-specific procedures], including onboard diagnostic-related information, is made available for public inspection and review.'' Again, FOIA was cited as well as the Clean Air Act sec. 208(c), 202(m), and 206.

*B. EPA Response*

EPA is adopting as final the proposed extension of RDP I rules to beyond the 1998 model year. It is of no benefit to the Agency, to manufacturers, or to the general public to discontinue the RDP I regulation and revert back to the outdated 50,000-mile AMA durability procedures. The automotive industry uniformly and strongly supports the extension of RDP I. All negative comments center around the availability of information which manufacturers may have provided EPA during the RDP I approval process, not the actual process itself. EPA is not determining in today's rule the confidentiality of any information submitted by manufacturers. There is already a separate, well-established procedure for making such determinations. EPA's information disclosure process, as mandated by the Freedom of Information Act (FOIA), requires that the submitters of the information bear the burden of proof for substantiating claims of information confidentiality. Requests received for information which the manufacturer has identified as confidential business information are handled in accordance with the procedures in 40 CFR part 2, subpart B. The Agency will continue to follow these procedures to make confidentiality determinations of manufacturer information. Again, this process is separate from the certification process, hence the RDP I regulation will continue to be in effect, and information submitted to EPA during the RDP I approval process will be handled and disseminated in accordance with the existing regulations.

The Agency is unable to determine how Envirotest's request that OBD II not be used to replace the I/M 240 test applies to the RDP I rule being promulgated today. Envirotest did not submit any information which tied the I/M 240 test or OBD II regulations to RDP I, other than stating that some manufacturers have made confidentiality claims on certain OBD information. OBD (CAA section 202(m)) issues and the relationship between OBD and I/M requirements have been addressed in separate rulemakings. See, for example, 61 FR 40940 (August 6, 1996). Therefore, the Agency is not addressing this comment in today's rule.

As they discussed in their comments, Ethyl has previously requested manufacturer information held by EPA, which has been claimed as confidential. Ethyl has appealed this claim, which is currently under consideration by EPA's Office of General Counsel. Ethyl also takes issue with the legal arguments presented by GM in their comment submitted to the Docket for this rulemaking. The purpose of today's rule is not to make a determination under FOIA if manufacturer information is or is not confidential or if a manufacturer's justification for confidentiality is or is not valid. The purpose of today's rule is to provide effective regulations requiring manufacturers to demonstrate that the vehicles they make are durable and will comply with emission standards for their useful lives. As stated above, EPA will continue to uphold the statutes and regulations regarding the disclosure of information to the public using the procedures already established for this purpose. Those opposed to the determinations made have appeal rights under 40 CFR 2.205 through EPA's Office of General Counsel.

The aftermarket associations requested that EPA in its RDP I rule *require* manufacturers to publicly disclose all information concerning RDP processes. EPA is not adopting this requirement because it did not propose to do so, and furthermore believes that the more appropriate venue to handle public disclosure of information is via the existing FOIA procedures, not through this rulemaking.

## III. Environmental Effects and Economic Impacts

*A. Economic Impacts*

This action extends an existing program without modification, and as such, the Agency does not expect any new economic impacts over and above those described in the interim rulemaking. In general, the RDP–I interim rulemaking projected annual cost savings with respect to the previously existing program of approximately $8.6 million, and

although this number is highly dependent upon the interaction of several variables, all modeled scenarios resulted in some level of savings. A complete description of those impacts is contained in 58 FR 3994 (January 12, 1993).

*B. Environmental and Cost-Benefit Impacts*

The RDP I rulemaking revised testing and administrative procedures necessary to determine the compliance of light-duty vehicles and light-duty trucks with the Tier 1 emission standards promulgated in June 1991, and no environmental benefit was claimed over and above that already accounted for in the Tier 1 rule. Today's action will similarly claim no environmental benefit. A detailed discussion of the Tier 1 environmental impacts can be found in 56 FR 25734 (June 5, 1991).

## IV. Public Participation and Effective Date

This final rule is effective on September 22, 1997.

A public hearing was scheduled, but canceled due to the lack of any participants.

During the public comment period, six written comments were received. These are addressed in Section II. above.

## V. Statutory Authority

Authority for the actions promulgated in this final rule is granted to EPA by sections 202, 203, 205, 206, 207, 208, 215, 216, 217, and 301(a), of the Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a), and 5 U.S.C. 553(b)).

## VI. Administrative Designation

Under Executive Order 12866, the Agency must determine whether the regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

## VII. Impact on Small Entities

The Regulatory Flexibility Act requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to develop a proposed Regulatory Flexibility Analysis.

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this rule. This rule will not have a significant adverse economic impact on a substantial number of small businesses subject to this rulemaking. This rulemaking will continue to provide regulatory relief to automobile manufacturers by offering options for durability demonstrations and at the same time by maintaining consistency with California durability requirements. It will not have a substantial impact on such entities.

In the absence of the rule, the expiration of the § 86.094–13 provisions for light duty exhaust durability procedures would result in the need all manufacturers to perform time-consuming, expensive durability procedures. Manufacturers would also be required to perform separate durability demonstrations for California.

Therefore, EPA has determined that this regulation does not have a significant impact on a substantial number of small entities.

## VIII. Reporting and Recordkeeping Requirements

Today's action does not impose any new information collection burden, because this action merely extends the applicability of the previously existing regulation, including information collection. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in 40 CFR 86.094–13 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned ICR No. 2060–0104.

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.

Copies of the ICR document(s) may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW. (mail code 2137); Washington, DC 20460 or by calling (202) 260–2740. Include the ICR number in any correspondence.

## IX. 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).

## X. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (signed into law on March 22, 1995) requires that EPA prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 of the Unfunded Mandates Reform Act requires EPA to establish a plan for obtaining input from and informing, educating and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, EPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. EPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless EPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this final rule is expected to result in the expenditure by state, local and tribal governments or private sector of less than $100 million in any one year, EPA has not prepared a budgetary impact statement or specifically addressed selection of the least costly, most cost-effective or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, EPA is not required to develop a plan with regard to small governments.

**List of Subjects in 40 CFR Part 86**

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: August 15, 1997.

**Carol M. Browner,**

*Administrator.*

For the reasons set forth in the preamble, part 86 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 is revised to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

**§ 86.094–13 [Amended]**

2. In § 86.094–13, paragraphs (a)(1), (c)(1), (d)(1), (e)(1), and (f)(1) are amended by revising the words ''1994 through 1998'' to read ''1994 and beyond''.

**§ 86.094–26 [Amended]**

3. In § 86.094–26, paragraphs (a)(2), (b)(2)(i), and (b)(2)(ii) are amended by revising the words ''1994 through 1998'' to read ''1994 and beyond''.

[FR Doc. 97–22368 Filed 8–21–97; 8:45 am]

BILLING CODE 6560–50–P

federal register

Friday
August 22, 1997

## Part X

# The President

**Memorandum of August 20, 1997—Determination Under Section 610(a) of the Foreign Assistance Act of 1961, as Amended, To Transfer $17.5 Million to the Operating Expenses Appropriation**

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# Presidential Documents

**Title 3—**

## The President

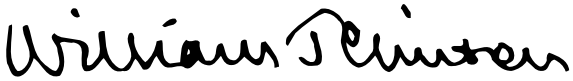
**Memorandum of August 20, 1997**

## Determination Under Section 610(a) of the Foreign Assistance Act of 1961, as Amended, To Transfer $17.5 Million to the Operating Expenses Appropriation

**Memorandum for the Administrator of the Agency for International Development**

Pursuant to the authorities vested in me by sections 109 and 610(a) of the Foreign Assistance Act of 1961, as amended (the ''Act''), I hereby determine that it is necessary for the purposes of the Act that $17.5 million appropriated for fiscal year 1997 to carry out chapter 1 of part I of the Act be transferred to, and consolidated with, appropriations made to carry out section 667(a) of the Act. I hereby authorize such transfer and consolidation.

This determination shall be effective immediately, and you are authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
*Washington, August 20, 1997.*

[FR Doc. 97–22575
Filed 8–21–97; 8:45 am]
Billing code 6116–01–M

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Whooping cranes; Rocky Mountains population

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